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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 WILLIAM MCCAFFREY,

4 Plaintiff,

5 v.

11 CV 1636 (RJS)

6 DAVID DIAZ and ROBERT ARBUISO,

7 Defendants.

8 -----x
9 New York, N.Y.
April 29, 2014
10 9:00 a.m.

11 Before:

12 HON. RICHARD J. SULLIVAN

13 District Judge
and a Jury

14 APPEARANCES

15 IRVING COHEN
GLENN A. GARBER
Attorneys for Plaintiff

16 NEW YORK CITY LAW DEPARTMENT
17 OFFICE OF CORPORATION COUNSEL
ANDREW GABRIEL LARKIN III
18 VICKI BECKER ZGODNY
Assistant Corporation Counsel for Defendants
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1 (Trial continuing in open court; defendant present)

2 (Jury not present)

3 THE COURT: So I asked the parties to be here at 9:00.
4 And I also asked Ms. Hines to be here at 9:00. Some were,
5 some were not. We don't have defense counsel, I'm not sure
6 why. I'm not waiting.

7 Over the weekend, the plaintiffs served a subpoena on
8 the district attorney's office requesting all notes of witness
9 interviews of Evan Krutoy in relation to People vs. McCaffrey
10 and People vs. Peguero. It was -- the subpoena was made
11 returnable for yesterday morning at 9:30. I have a letter from
12 Ms. Hines responding to that subpoena, seeking to basically
13 quash it on several grounds. I won't repeat what is in the
14 letter, but it's a two-page letter. I then, last night,
15 received an e-mail from Mr. Cohen, which I guess responds to
16 some of the points in Ms. Hines' letter.

17 Ms. Hines, have you seen the e-mail from Mr. Cohen?

18 MS. HINES: Yes, your Honor. I saw it this morning on
19 my Blackberry. Since my Blackberry is downstairs, I no longer
20 have a copy.

21 THE COURT: Can we print out a copy, please. It's not
22 long. In any event, I think I get the gist of your arguments.
23 Do you want to take a look at the letter from Mr. Cohen before
24 I hear from you, or do you know what you want to say.

25 MS. HINES: If I might see it, even on a telephone.

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1 MR. GARBER: I have it.

2 THE COURT: It's right here. Go ahead and give it to
3 her.

4 MR. COHEN: If I might, Ms. Hines and I have had a
5 discussion before.

6 THE COURT: Oh, all right.

7 MR. COHEN: And we're really only interested in Pujols
8 and Sosa.

9 THE COURT: So the witnesses' statements of Pujols and
10 Sosa, not all witness interviews in both cases.

11 MR. COHEN: Well, yes, in both cases, but of course
12 Mr. Krutoy interviewed them with respect to the
13 reinvestigation.

14 THE COURT: So it's a slightly narrower request.

15 Now, let's let Ms. Hines take a look at your e-mail
16 and then I'll hear from her.

17 MS. HINES: By way of a response, I would simply say
18 that contrary to Mr. Cohen's assertion that having the matter
19 come up in Mr. Krutoy's deposition should have put us on notice
20 that we should be looking to produce them. I think we had
21 every reason to believe that request was abandoned when we
22 didn't hear another word about it for another two years.

23 THE COURT: Okay.

24 MS. HINES: I mean it was certainly discussed. And if
25 I received a telephone call after the deposition, it would have

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1 been one thing, but a subpoena the weekend that the trial is
2 beginning, is certainly untimely.

3 THE COURT: It is puzzling to me, Mr. Cohen, something
4 you have known about for years, could have been the subject of
5 a request in discovery, and then we would have had plenty of
6 time to deal with this issue. Instead, it gets served the
7 Saturday you know before a Monday trial with a request that it
8 be produced by 9:30 that morning. What's going on?

9 MR. COHEN: As I indicated, your Honor, trials --
10 I think what's fair for the goose is fair for the
11 gander. We received the subpoena for Mr. Dwyer's financial
12 records within the same day, I believe it was --

13 MR. GARBER: Friday.

14 MR. COHEN: It was Friday, actually. And, in fact, we
15 have gotten those documents together for the defendants.

16 Mr. Krutoy was not really scheduled to be a witness.
17 The only reason he would be a witness is if, depending upon the
18 testimony of the Ms. Pujols and Ms. Sosa. And so the
19 importance of it was not totally realized until we started
20 doing intense preparation.

21 THE COURT: Wait. Seems to me it would have been very
22 relevant, from the beginning, to see whether or not pujols and
23 Sosa were saying things to Krutoy that are inconsistent with
24 what they said subsequently, and what they said before. I mean
25 I -- it would have struck me as very relevant to the case from

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1 the get-go, not as impeachment for Krutoy.

2 MR. COHEN: We were having discussions here for
3 several days about what witnesses would be called. And a lot
4 depended upon what Ms. Pujols, especially, and to some degree
5 what Ms. Sosa, would say on the witness stand. It may not even
6 be necessary at all, under those circumstances, depending upon
7 what they testified to.

8 I just think that this could be important for us to be
9 able to fully present our case. And I don't see why it is such
10 an onerous thing to do, especially now. We pared it down to
11 these two witness. And Ms. Hines said it would make it her
12 job, or whoever's job it is, a lot simpler and easier.

13 So, on balance, I think that we should be able to, if
14 we can get it, I don't see any reason why we shouldn't be able
15 to get it.

16 THE COURT: Well, I mean the timing is unfortunate, I
17 think. It's pretty obvious that this was relevant. And I
18 these are things I think should have been requested in
19 discovery.

20 With respect to overbroad, I guess we have dealt with
21 that Ms. Hines, right?

22 MS. HINES: Yes, your Honor.

23 THE COURT: So you're not arguing that two
24 witnesses -- notes with respect to two witnesses is overbroad.

25 MS. HINES: No.

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1 THE COURT: Okay. So then we get to unduly
2 burdensome. And so this is certainly less burdensome, so are
3 you abandoning unduly burdensome as a basis for opposing at
4 this point?

5 MS. HINES: I'm certainly emphasizing it less.

6 THE COURT: Okay.

7 And the last one, of course, is that there is
8 privilege. There is privilege. I don't think there is any
9 dispute there is privilege here. The issue is whether that
10 privilege can be overcome. It is not attorney/client, it's
11 work product. And so there certainly are circumstances under
12 which the privilege could be overcome. And it would be
13 admissible and relevant evidence. Hard to say without knowing
14 what the notes are. So I guess I'm inclined to defer on the
15 last point. I take your point with timeliness. And,
16 obviously, you have not produced the documents, you didn't
17 proceed them yesterday. No one could fault you for not
18 producing them yesterday. But given the narrower request, how
19 long do you think it will take you to review these materials
20 and find what is responsive to the request.

21 MS. HINES: Two to three days.

22 THE COURT: Two to three days.

23 MS. HINES: Maybe two days, if I go back to my office
24 now.

25 THE COURT: Okay. So two days, means the end of the

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1 day on Wednesday.

2 MS. HINES: Well, that would be tomorrow.

3 THE COURT: So that's two days. I mean all day today,
4 all day tomorrow, end of the day tomorrow. You are talking
5 about Thursday?

6 MS. HINES: Thursday morning.

7 THE COURT: Thursday morning, okay.

8 I mean I don't think that is unreasonable. Do you
9 think that's unreasonable, Mr. Cohen?

10 MR. COHEN: No, your Honor.

11 THE COURT: No so Thursday morning, then, if you want
12 to come back, we can do this again at 9:00. Or you can send
13 the documents sooner, if you have got them, so I can take a
14 look at them, and it would be an in-camera review, I suppose.
15 But there really has to be a showing as to why there
16 is materials in those notes that would overcome the privilege.
17 So I mean at this point it sounds like you are just sort of
18 guessing, Mr. Cohen. Or you're hoping that there might be
19 something there.

20 MR. COHEN: I don't think it is guesswork.

21 As I said in my brief response, it's an investigator,
22 which is what Mr. Krutoy was acting as at the time, hearing
23 witnesses, and taking notes of what they were saying. That's
24 not work product, that is statements of witnesses. His
25 thoughts, and his feelings about it, and what he wanted to do

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1 with it, and whatever else he was talking to other assistants
2 about, that of course is different.

3 But those were the words that he took down that were
4 said to him by Ms. Pujols and Ms. Sosa, those are not work
5 product.

6 THE COURT: All right. Well, let's see. I guess
7 let's see what we've got, and then to the extent you are
8 asserting privilege, you'll do that on Thursday, right?

9 MS. HINES: Yes, your Honor.

10 THE COURT: I mean it's not all privileged, clearly, I
11 doubt. And so there might be some things that are clearly not
12 privileged that would be producible, and other things over
13 which he would be asserting a privilege.

14 MS. HINES: I'll have to see the notes. And I'll
15 bring them to your Honor Thursday, if not submit them before.

16 THE COURT: Okay. All right, so I think that's the
17 best we can do. And I think that's a reasonable approach. I
18 thank you for doing it. I thank you for being here today.

19 While you're here, do you have any information you can
20 share with us concerning Ms. Strain and her availability? I
21 thought that it was suggested yesterday you might know the
22 answers to these questions.

23 MS. HINES: I spoke with her yesterday. She is
24 actually on trial before Justice Zweibel in New York State
25 Supreme Court. And she has the possibility for being here

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1 Thursday, because Judge Zweibel runs his Court calendar on
2 Thursday. Anything else, I think, would inconvenience that
3 Court and interrupt your trial.

4 THE COURT: I think that sounds like it would probably
5 work okay. Then, if we had to call her on Thursday, we'll make
6 it work; right?

7 MR. GARBER: Yeah, the only issue is it is out of
8 turn. And there is some issue about, you know, motions at the
9 end of the plaintiff's case, you know, but --

10 THE COURT: I'll reserve if I have to.

11 MR. GARBER: Yeah.

12 THE COURT: But I mean, look, out of turn, this is I
13 think the quintessential situation in which a witness should be
14 taken out of turn, where it is a lawyer who is engaged with
15 another trial with another jury in front of another judge.
16 Lots of good reasons there for us to be accommodating. So I
17 think that's what we'll do, okay. If you could communicate
18 that to her, that would be terrific, that I'll expect Thursday
19 is when we'll get her on, I assume.

20 Who is calling her, Mr. Garber?

21 MR. GARBER: Depends on how things unfold but there's
22 a good chance we would call her.

23 THE COURT: Who is going to be in contact with her
24 about what time to be here?

25 MR. GARBER: She won't communicate with me. I have

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1 been communicating with Ms. Hines.

2 MS. HINES: Calling me is the best.

3 THE COURT: Let's do that yet.

4 Anything else while Ms. Hines is here?

5 MR. GARBER: Yes. Mr. Krutoy, also an uncertain thing
6 as to whether or not we are going to call him. He was also
7 subpoenaed. I think if we're going to deal with -- well, I
8 would prefer to have him here on Thursday as well, if needed.

9 THE COURT: All right. He has been subpoenaed.

10 MR. GARBER: Or available.

11 THE COURT: Subpoenaed for what day?

12 MR. GARBER: Subpoenaed for Monday, with the caveat
13 that we would alert their office to scheduling issues.

14 THE COURT: Okay. All right. So, Ms. Hines, you
15 think your responsible for Mr. Krutoy, too?

16 MS. HINES: Yes.

17 THE COURT: And so is there any problem with him being
18 here, or available to testify, on Thursday?

19 MS. HINES: I have not spoken to him about his
20 schedule, but I'll certainly be the contact person. And if for
21 any reason he can't come Thursday, I'll tell the lawyers.

22 THE COURT: Okay, that's great.

23 MS. ZGODNY: Excuse me, your Honor?

24 THE COURT: This is a short trial, make sure we don't
25 have any long glitches.

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1 Yes, Ms. Zgodny?

2 MS. ZGODNY: With respect to ADA Krutoy, I thought
3 your Honor had already addressed that at one of the pretrial
4 hearings that he would not be testifying.

5 THE COURT: I think the only way he would be
6 testifying is if there are statements that were made by Peguero
7 or made by Sosa, to Krutoy, that contradict what they say on
8 the stand. And then it seems to me it is a good chance it is
9 coming in, because I don't -- depending on what the statement
10 is, it's probably not collateral, and so I think some extrinsic
11 evidence would be okay.

12 I don't know whether that is going to be the case, I
13 mean so I guess once we see the notes, we'll have a sense as to
14 whether there are any inconsistent statements at all made by
15 Peguero or Sosa. If there aren't, I can't imagine what
16 Mr. Krutoy is going to talk about. So I mean I think that you
17 can reserve an objection as to relevance or admissibility of
18 any testimony he's gonna have. But my sense is that it's
19 primarily to impeach Sosa and Peguero; is that right, Mr.
20 Garber?

21 MR. GARBBER: Yes.

22 THE COURT: Yeah. So that makes sense to me. But
23 it's hard to know whether there is anything that is going to
24 come of it.

25 All right, Ms. Hines, thanks a lot, I appreciate it.

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1 MS. HINES: You're welcome, Judge.

2 THE COURT: Good to see you.

3 MS. HINES: Nice to see you.

4 THE COURT: It's now 9:25. I'm going to check in to
5 see where we are with the jury.

6 Are there other things we need to deal with before the
7 jury gets here?

8 MR. GARBER: Briefly.

9 THE COURT: Chris, could you check the jury?

10 MR. GARBER: I have, for Mr. Larkin --
11 Can I proceed?

12 THE COURT: Yeah.

13 MR. GARBER: -- all of the checks that were paid to
14 Joe Dwyer from Glenn A. Garber, PC, and the Exoneration
15 Initiative over the course of the relationship.

16 As I stated, our relationship has terminated at least
17 a year now. He is also not a cooperative witness. It is kind
18 of a theme in this case, apparently. So it looks like he has
19 been served.

20 THE COURT: Maybe nobody wants to cooperate with you?

21 MR. GARBER: It must be me, I'm giving off a vibe.

22 THE COURT: I'll take judicial notice of that.

23 MR. GARBER: I hope I can turn that around. And we'll
24 see, okay.

25 THE COURT: Okay.

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1 MR. GARBER: But anyway, we're going to need a
2 material witness order, I think, because he has been very
3 difficult and we --

4 THE COURT: Wait a minute, wait a minute. He is not
5 responding to subpoenas?

6 MR. GARBER: No. I mean I can show you the e-mails
7 I'm having with him. I don't need to burden you with it. The
8 latest is I don't recall getting a subpoena from you, if you
9 don't pay my witness fees, I'm going to take the position I was
10 not served with a subpoena. We served, a month ago, he said he
11 would accept a subpoena by e-mail. I re e-mailed him last
12 night, said if I don't hear back from you by 9:00 a.m. today,
13 I'll bring it to the Court's attention. I don't want to be in
14 a situation where Ms. Pujols is testifying this afternoon,
15 probably spill into tomorrow. But he should be here tomorrow
16 morning. And I don't want to be in the spot where we have not
17 taken the right process to get him here. So we can give it to
18 him maybe lunchtime. I just don't want to mess around with
19 this. The tape has to be discussed a certain way with him,
20 that I'm not, I'm not successful with Ms. Pujols, or other
21 things surrounding his conversation with her, that I'm not
22 successfully getting out to Ms. Pujols, there is a possibility,
23 I'm not saying a great possibility, but a possibility he may
24 have to testify.

25 THE COURT: All right.

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1 Well, if you want a material witness warrant, then I
2 guess make a request and get the paperwork together.

3 MR. GARBER: Okay, we'll get some paperwork in this
4 afternoon.

5 THE COURT: Certainly. You can convey that that's
6 what you are going to be seeking, and the marshals are going to
7 have to come get him. And I'm not going to be pleased if I
8 have to waste resources because some guy thinks he doesn't have
9 to accept subpoenas. I could also hold him in contempt, I
10 suppose, if he doesn't think the subpoena is --

11 MR. GARBER: I'll try reasonably with some more
12 e-mails throughout the course of the day. And, hopefully, I
13 guess we can reconsider that drastic step before the business
14 closes. Maybe that's the way to go.

15 THE COURT: If a guy is trying to make his living as
16 an investigator, with the understanding that investigators
17 sometimes have to testify, and he has the gall to think that he
18 doesn't need to show up when he is subpoenaed, I would think
19 that's going to compromise his ability to make a living.
20 Because I'm certainly not going to tolerate a guy who does
21 that. And I can, going forward, he will probably have to be a
22 part of any direct or cross that he gives. I mean that's fair
23 impeachment material, that he doesn't think subpoenas apply to
24 him, when it doesn't suit him. So seems like a foolish move.
25 Every witness has to be here when they are subpoenaed. And

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1 there are no exceptions for investigators, whether they have
2 been paid or not.

3 MR. GARBER: Yeah, can I represent to him that I have
4 raised this in Court?

5 THE COURT: Sure. Do you want to get a copy of the
6 transcript, you can send it to him.

7 MR. GARBER: I can do that, but I want to make sure I
8 don't go farther than what the conversation is about, that the
9 Court is considering, when you don't comply with the subpoena
10 to hold you in contempt or issue a material witness order. I
11 would like to state that to him in e-mail fashion today,
12 because that may prompt him to comply. You are considering it,
13 that's all I would say. I've raised that, the Court is
14 considering those options.

15 THE COURT: All right.

16 MR. GARBER: Okay.

17 THE COURT: Well, I'm considering all of these
18 options, but I am really not looking forward to wasting time
19 with this kind of nonsense when somebody has been subpoenaed, I
20 think is the short answer.

21 All right, we are missing three jurors, which troubles
22 me.

23 MR. GARBER: As far as Dwyer's, the payments to Dwyer.

24 THE COURT: Right.

25 MR. GARBER: Do you want me to turn those over now to

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1 Mr. Larkin?

2 THE COURT: I mean I don't care if they are
3 responsive, and you have no problem doing it, then that's fine.

4 MR. GARBER: Okay.

5 THE COURT: If you think there is a reason not to do
6 it.

7 MR. GARBER: Well.

8 THE COURT: Or that it should be turned over in a
9 different form, then --

10 MR. GARBER: No.

11 THE COURT: -- that's fine, too.

12 Okay, all right, Chris, have you told them to knock
13 when they are all here?

14 THE DEPUTY CLERK: I will do that.

15 THE COURT: Let's do that.

16 While we're waiting are there other things that we
17 should be focused on?

18 MR. GARBER: No. I would like a few minutes with Mr.
19 McCaffrey, probably right here, if we could.

20 THE COURT: All right. Okay, let's bring in the jury.

21 THE DEPUTY CLERK: All rise.

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(In open court)

(Jury present)

THE COURT: Have a seat, good morning. Good morning, ladies and gentlemen. We have a late start. Ms. Romero, you got lost or something?

JUROR: Quite lost.

THE COURT: As I said, there is nothing we can do if one person is late. We'll try to make up some lost time.

Coffee and everything came today? It's not the greatest, I would rather get Dunkin Donuts, candidly. But let us know if there is something you have not seen.

We'll resume with reading the transcript of the criminal trial, same way we did yesterday.

So Mr. Larkin, and Ms. Zgodny, are you going to do the readings? Okay, come on up.

MR. LARKIN: And this is picking up at trial transcript page 189, line 10, okay.

"Q. What happened as you got into the car, where did you go?

A. They were going to take me back to the restaurant, but they took me -- they took a bridge, like a little bridge. Then that's when I realized I was not going back to the restaurant, because we never took a bridge to go to park the car. Then I started crying.

Q. What happened as you were on the bridge?

A. I was crying. And he -- the driver was saying: Leave her

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"Buirny Peguero"

1 alone, leave her alone; he was acting nice to me.

2 Q. That was the original guy? Or the driver?

3 A. The driver.

4 Q. Was saying that to the defendant?

5 A. To the defendant. To leave me alone.

6 Q. Okay.

7 A. And I was trying to look for the thing to get out of the
8 car, to jump out of the car. I was so nervous, I couldn't find
9 it. And then my phone started ringing.

10 Q. Okay. I'm going to back up for a minute.

11 What was the defendant doing that sparked the driver
12 to say leave her alone.

13 A. Touching my leg.

14 Q. And did you want him to touch your leg?

15 A. No.

16 Q. And were you crying at this point?

17 A. Yes.

18 Q. Is it possible -- "

19 Sustained. Moving to line 19.

20 "Q. Do you know if you made any phone calls before you got on
21 the bridge?

22 A. I don't remember. I remember that when I was in the on --
23 the bridge, I received a phone call.

24 Q. And do you know who was on the other line of that phone
25 call?

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"Buirny Peguero"

1 A. Well, I believe it was Heliana, I'm not sure.

2 Q. Okay.

3 A. Because the only two persons I spoke, all of the time, was
4 Orlando and Heliana.

5 Q. And if you know, when you left the restaurant, was Maria
6 and Aurora also with Heliana and Orlando?

7 A. Yes.

8 Q. And what happened as your phone started ringing?

9 A. He took a knife out.

10 Q. Who?

11 A. The original guy.

12 Q. The defendant?

13 A. Uh-huh.

14 Q. Do you know what color the knife was?

15 A. Dark.

16 Q. And what did he do with the knife?

17 A. He just took it out.

18 Q. Could you see it?

19 A. Yeah.

20 Q. And what if anything did he say to you when he took the
21 knife out?

22 A. To pick my phone up and say I was going to go back in five
23 minutes.

24 Q. And were you crying at that point?

25 A. Yes.

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"Buirny Peguero"

1 Q. What did you do next?

2 A. I picked up my phone without crying, and told my friend
3 that I was going to be back in five minutes.

4 Q. What happened next?

5 A. Then they were driving. Then my phone keeps ringing. I
6 didn't pick up for a couple of times. Then whenever I picked
7 up, I was very, very scared, but I thought he was like going to
8 kill me.

9 Q. Were you crying at some of those points when your phone was
10 picked up?

11 A. When I was going back.

12 Q. And who was calling you, if you know, on the phone when it
13 was ringing, and you were crying?

14 A. Orlando and Heliana.

15 Q. Did there come a time when you didn't have your phone with
16 you in the car?

17 A. Yes.

18 Q. And how did that come about?

19 A. The driver got my phone.

20 Q. And did you notice or observe him using your phone?

21 A. He spoke to Orlando.

22 Q. The driver, that is?

23 A. Yes.

24 Q. When you first got to the bridge, what did you do when you
25 realized you were on the bridge?

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"Buirny Peguero"

1 A. I start crying. I was trying to get out of the car.

2 Q. Did you ever ask them to let you out?

3 A. Yeah.

4 Q. And what happened?

5 A. I told them take me back, where are you taking me. And
6 then he said he was going to drop off his friend at his house.

7 Q. And did they -- "

8 MR. LARKIN: And the Court says: Who said that?

9 "A. The driver he told me not to the worry about it, not to
10 worry about it, nothing is going to happen to you. I was just
11 going to drop off my friend, and I'm going to take you back to
12 the restaurant.

13 Q. Did you ever agree to go with him to the Bronx?

14 A. Uh-uh, never.

15 Q. Did you agree to go with them anywhere other than the
16 restaurant?

17 A. No.

18 Q. Do you know what kind of car you were in?

19 A. It was a white car.

20 Q. I'm going to show you what have previously marked as
21 People's 4 and 5. Can you take a look at those photos and let
22 me know when you are done looking at them.

23 You done?

24 A. Uh-huh.

25 Q. What is the first photograph, can you tell us what that --

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"Buirny Peguero"

1 excuse me. Can you tell us what the number is at the bottom?

2 A. Four?

3 Q. Yes. What is depicted in that photograph?

4 A. That's the car.

5 Q. Okay. And what color is it?

6 A. White.

7 Q. Could that be the car that you were in that night?

8 A. It could be, I'm not sure.

9 Q. What is the second number on the photograph?

10 A. Five.

11 Q. And what is depicted in picture number 5?

12 A. The back seat.

13 Q. And could that be the back seat where you were in that
14 night?

15 A. Could be, I'm not sure.

16 Q. Okay. Approximately how many times was your phone ringing
17 while you were on the bridge, and after the bridge, if you --
18 if you know.

19 A. Like around four times, five.

20 Q. What happened after the car went over the bridge?

21 A. They took me to a street, dark street.

22 Q. And what happened -- what did they do with the car at the
23 street. Was the car parked?

24 A. Yeah.

25 Q. What happened once the car was parked?

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"Buirny Peguero"

1 A. I started fighting with the original guy, because he was
2 touching me.

3 Q. Okay. Is that the defendant?

4 A. Yes.

5 Q. How was he touching you?

6 A. He was touching my leg. He was touching me.

7 Q. And how were you fighting with him?

8 A. I tried to push him away from me, and he kept trying to
9 take my pants off.

10 Q. And what happened as you -- as you fought with him?"

11 MR. LARKIN: The transcript says follow him, but,
12 looks -- I'll read it as -- I'm sorry, I'll read the question
13 as it says. This is page 196 line 5. Question is --

14 "Q. What happened as you followed him?

15 A. He did -- took my pants off.

16 Q. What happened to your belt?

17 A. He broke my belt.

18 Q. The original guy?

19 A. Uh-huh.

20 Q. Do you know where the other two guys where when he was
21 doing this?

22 A. In the front.

23 Q. What did the defendant do as he tried to take your pants
24 down?

25 A. He took -- he took them out -- he took pulled my pants down

E4t0mcc1

"Buirny Peguero"

1 and --

2 Q. What were you doing?

3 A. Fighting. He slapped me in my face.

4 Q. How many times did he slap you in your face?

5 A. I don't remember.

6 Q. What happened after he slapped you, where were his hands
7 and where were yours?

8 A. He was grabbing my hands.

9 Q. Your hands?

10 A. Uh-huh.

11 Q. Was he grabbing any other part of your body?

12 A. I cannot describe, really, how everything happened. We
13 were just fighting, and he was trying to have -- to have sex
14 with me.

15 Q. What happened after he pulled your pants down?

16 A. He did put his penis inside of me.

17 Q. And what was he doing with your arms at that point?

18 A. He was grabbing me.

19 Q. Could you push him off?

20 A. I was trying, but I couldn't.

21 Q. Where are your arms was he holding you?

22 A. Over here.

23 Q. You're pointing to right above your elbows?

24 A. Yeah.

25 Q. On both arms?

E4t0mcc1

"Buirny Peguero"

1 A. Yeah.

2 Q. And how was he holding you?

3 A. Hard. Like holding me for me to stay still.

4 Q. And did you feel his penis enter your vagina?

5 A. Yes.

6 Q. Did he penetrate you?

7 A. Yes.

8 Q. When he was doing this, did he do anything else to you?

9 A. He bite me.

10 Q. Where did he bite you?

11 A. In my shoulder.

12 Q. Approximately how long was his penis inside of you?

13 A. A couple of minutes.

14 Q. What were you doing at that point?

15 A. Fighting.

16 Q. Were you still crying?

17 A. Yeah.

18 Q. Could you tell if your phone -- do you know what happened
19 to your phone at that point?

20 A. No.

21 Q. Did you tell him that you didn't want to have sex with him?

22 A. Yeah.

23 Q. What did you say?

24 A. I just -- I didn't care about that. All I care -- I was
25 afraid that he kill me, that's when I was -- that's what I was

E4t0mcc1

"Buirny Peguero"

1 saying.

2 Q. What were you saying?

3 A. Not to kill me.

4 Q. Did you tell him -- did you want to have sex with him?

5 A. No.

6 Q. Did you agree to have sex with him?

7 A. No.

8 Q. Did you ever help him take your pants off?

9 A. No.

10 Q. Do you know if he was saying anything to you?

11 A. I don't remember.

12 Q. Did you tell him to stop?

13 A. No.

14 Q. Did you tell him no?

15 A. Yes.

16 Q. Do you know if he was using a condom?

17 A. No.

18 Q. Were you able to see him the entire time when he was
19 fighting with you?

20 A. No, but I'm sure -- I mean I was fighting with him, I was
21 not looking at him, because I was just crying.

22 Q. While he was having sex with you, did he cause any other
23 pain to you, other than the bite and the holding of your arms?

24 A. My leg.

25 Q. What kind of pain to your leg?

E4t0mcc1

"Buirny Peguero"

1 A. He did a bruise to my leg.

2 Q. Do you know if he ejaculated?

3 A. No. I don't know.

4 Q. Approximately -- do you know if he ejaculated?

5 A. No.

6 Q. No, you don't know?

7 A. I don't know.

8 Q. After he stopped having sex with you, where did he go?

9 A. He get out of the car.

10 Q. And what did -- what did you do next?

11 A. Stayed there, crying.

12 Q. And did you try to get out of the car at that point?

13 A. No.

14 Q. Why not?

15 A. Because I -- I was just crying. And the second guy came.

16 Q. The second guy, being which one?

17 A. The driver.

18 Q. Was that the Spanish-speaking guy?

19 A. Uh-huh.

20 Q. And what did he do?

21 A. He had sex with me, too, but he -- he was just a few
22 seconds, and he said to me: Sorry.

23 Q. He said to you, sorry? How long was his penis inside of
24 you?

25 A. Seconds.

E4t0mcc1

"Buirny Peguero"

1 Q. Did he penetrate you?

2 A. Yeah.

3 Q. Do you know if he used a condom?

4 A. No.

5 Q. No, you don't know?

6 A. I don't know.

7 Q. And the first guy, do you know if he used a condom?

8 A. I don't know.

9 Q. Did the second guy cause you any injuries?

10 A. No.

11 Q. What happened after he said I'm sorry?

12 A. He just got out of the car.

13 Q. And what were you doing at that point?

14 A. I had just laid down there, I didn't do anything.

15 Q. Did you attempt to fight with the second guy?

16 A. No.

17 Q. Why not?

18 A. I was just crying, and I didn't want -- I didn't want to
19 care anymore, that's it.

20 Q. Why not?

21 A. Well, all I was caring for they not to kill me.

22 Q. Did you want to have sex with the second guy?

23 A. No.

24 Q. Did you ever agree to have sex with the second guy?

25 A. No.

E4t0mcc1

"Buirny Peguero"

1 Q. What happened after the second guy got out of the car?

2 A. His friend came in.

3 Q. Was that the original guy?

4 A. No, the third guy.

5 Q. And what did he do?

6 A. He did have sex with me.

7 Q. And did he injure you in any way?

8 A. No.

9 Q. Did his penis penetrate your vagina, as well?

10 A. Yes.

11 Q. How long was he inside of you?

12 A. A minute.

13 Q. What if anything did he say?

14 A. He didn't say anything.

15 Q. Do you know if he used a condom?

16 A. I don't know.

17 Q. Do you know if he ejaculated?

18 A. I don't know.

19 Q. What happened after the third guy had sex with you?

20 A. I pulled my pants up.

21 Q. Do you know where the defendant was at that point?

22 A. In the back seat.

23 Q. And where was the driver, the Spanish-speaking guy?

24 A. Driving.

25 Q. And where was the third guy?

E4t0mcc1

"Buirny Peguero"

1 A. In the front seat, passenger's seat.

2 Q. Approximately how long, how much time passed between the
3 time in which the car was parked, and the three of them, each
4 of them, penetrated and raped you?

5 A. Like an hour -- I'm not sure. It could be half hour, but
6 I'm not sure.

7 Q. What happened -- take us through. Everyone's back in the
8 car now. Where do you go next?

9 A. He dropped the third guy somewhere.

10 Q. And who is still in the car with you at that point?

11 A. The driver and the original guy.

12 Q. And where was the -- the original guy?

13 A. In the back.

14 Q. So when you are in the car and they drop someone off, who
15 is left in the car?

16 A. It was him, the original guy, and the driver.

17 Q. The original guy, being the defendant."

18 MR. LARKIN: And this is line 5.

19 "Q. Where did you go next?

20 A. To the parking lot. I remember that the driver said that
21 he was going to drop me off in the parking lot, and he said to
22 leave you there.

23 Q. He, being the defendant?

24 A. The original guy?

25 Q. Leave you where.

E4t0mcc1

"Buirny Peguero"

A. In the street.

(Continued on next page)

E4TUMCC2

"Biurny Peguero"

1 Q. And did they bring you back to the parking garage?

2 A. Yeah, the driver said that he was going to bring me back to
3 the parking lot.

4 Q. If you know, was your phone still ringing at that point?

5 A. Yeah, my friends were calling me and then that's when I
6 picked up and I was crying, and then he said, the original guy
7 said: Oh, stop crying, they're going to think something's
8 wrong, something's happening to you, stop crying.

9 Q. The original guy being the defendant?

10 A. Yeah.

11 Q. OK.

12 And what happened next?

13 A. Then I remembered that he spoke to Orlando.

14 Q. Who?

15 A. The driver.

16 And then he gave me the address where they can pick me
17 up. I don't know where I was at that time but I remember that
18 they gave -- he gave Orlando the wrong address and they took a
19 cab to pick me up, and whenever I was at the parking lot, the
20 guy from the parking lot gave Orlando the right address so
21 that's how they find me in the parking lot.

22 Q. OK.

23 When you got to the parking lot. Did the driver and
24 the defendant stay with you?

25 A. Yeah. Then I had -- I was in the passenger's -- I mean the

E4TUMCC2

"Biurny Peguero"

1 driver's seat, and I got in the car. I got in the car. I was
2 there. Because they went to look for my friend's car.

3 Then he said: Let her drive, let her drive. Then the
4 other driver said: No, she don't know how to drive. He said
5 that: Let her take care of herself.

6 Q. The person saying: Just let her drive, let her drive --

7 A. It was the original guy.

8 Q. The defendant?

9 A. Yeah.

10 Q. And what was the Spanish-speaking guy saying?

11 A. I don't know how to drove. So he took the key out of the
12 car and he put it up on the car, on top of the car.

13 Q. Did the defendant and the other guy stay there with you
14 until your friends arrived?

15 A. No, they left.

16 Q. Do you know if your friends Maria, Aurora and Heliana were
17 also with Orlando?

18 A. Yes.

19 Q. Did there come a point when they arrived at the, ing
20 garage?

21 A. Yes.

22 Q. What happened when you arrived at the garage?

23 A. I was arguing with Aurora because she left me by myself.

24 Q. And what were you like at that point in time? How was your
25 demeanor?

E4TUMCC2

"Biurny Peguero"

1 What were you doing at that point in time?

2 A. I was just crying and arguing with Aurora when they found
3 me.

4 Q. And when they found you, were all of your clothes still
5 intact?

6 A. No.

7 Q. What was wrong with your clothing?

8 A. My belt was broken.

9 Q. Do you know how your belt got broken?

10 A. He did. He broke my belt.

11 Q. The defendant?

12 A. Yeah.

13 Q. Did you --

14 When you got brought back to the parking lot, did you
15 interact with the parking lot attendant?

16 A. Excuse me?

17 Q. Did you speak to the parking lot attendant?

18 A. No.

19 Q. Approximately how long after you arrived at the parking lot
20 was it before your friends arrived?

21 A. I don't know, but it could be, like, around seven, ten
22 minutes. Probably less.

23 Q. From the time in which you first drive away from the
24 restaurant until the time in which you're reunited with your
25 friends, approximately how much time passed, if you know?

E4TUMCC2

"Biurny Peguero"

1 A. I don't know. It could be an hour, hour and so.

2 Q. Did there come a point when you realized that you had been
3 injured?

4 A. Yeah.

5 Q. When was that?

6 A. Actually I saw everything when I was in the hospital.

7 Q. And do you know what your injuries were?

8 A. Yeah.

9 Q. Can you tell us what they are?

10 A. My arms.

11 Q. What was wrong with your arms?

12 A. Bruises. I had bruises.

13 Q. Did you have injuries anywhere else?

14 A. My stomach over here. My leg. My shoulder.

15 Q. And how did you get those injuries?

16 A. He did it.

17 Q. 'He,' the defendant?

18 A. Yes.

19 Q. Do you remember if any police officers came to the parking
20 garage while your friends were there?

21 A. Yes.

22 Q. Did you tell the police what happened to you?

23 A. No.

24 Q. Why not?

25 A. Because I was scared. I was in shock. I was just crying.

E4TUMCC2

"Biurny Peguero"

1 Q. Did you speak to the police?

2 A. No.

3 Q. When your friends first arrived, did you immediately tell
4 them what had happened to you?

5 A. No.

6 Q. Why not?

7 A. First of all, I was embarrassed in front of Orlando. I
8 didn't want him to know.

9 Q. Why?

10 A. Because -- I don't know. I don't know him like that. He's
11 a man. I mean, I just felt very embarrassed and I don't want
12 to say anything in front of him.

13 Q. Did there come a point in time when you did tell your
14 friends what happened?

15 A. Yeah.

16 Q. Where was that?

17 A. I was crying in the backseat and then Heliana asked me what
18 happened to me, what happened to me. Then I started crying. I
19 didn't say anything. Then she asked me if they raped me and
20 then I said yes.

21 Q. And did you say who raped you?

22 A. I didn't say. They knew it was the guys.

23 Q. Which guys?

24 A. The original guy which is there.

25 Q. The defendant?

E4TUMCC2

"Biurny Peguero"

1 A. Yeah.

2 Q. And who else?

3 A. And his friends.

4 Q. And did you tell them --

5 Did you tell Heliana that those were the three guys
6 that raped you?

7 A. Three, yeah.

8 Q. When you told Heliana that, who was in the car?

9 A. Aurora, Orlando and Maria.

10 Q. Where were you going at that point in time?

11 A. We were going to drop off Orlando, but then after I say
12 that, they took me straight to New Jersey to the hospital.

13 Q. Was the car --

14 Were you guys driving at that point in which you told
15 them?

16 A. Yeah.

17 Q. Why did you decide to tell them at that point in time?

18 A. Because Heliana asked me and I didn't -- I didn't thought
19 that she was going to say anything. I thought she was going to
20 stay quiet until we drop off Orlando. But she started crying
21 and then she say everything.

22 Q. Did you tell everyone in the car what happened?

23 A. No.

24 Q. Did there come a point when you began talking about it in
25 the car in which everyone heard?

E4TUMCC2

"Biurny Peguero"

1 A. I just was crying. Heliana was the one that say
2 everything.

3 Q. At the time of this incident back in September of 2005, you
4 had a cell phone?

5 A. Yeah.

6 Q. And that was the cell phone that you were using that night?

7 A. Yes.

8 Q. Was that cell phone number 551-358-0988?

9 A. Yes.

10 Q. Is that still your phone number?

11 A. No.

12 Q. Did Orlando have a cellular telephone that night?

13 A. Yes.

14 Q. And was his number at the time 646-351-7228?

15 A. Yes.

16 Q. And did Heliana also have a cell phone that night?

17 A. Yes.

18 Q. Was her number 551-998-2788?

19 A. Yes.

20 Q. What hospital did you go to?

21 A. Christ Hospital.

22 Q. And is that in New Jersey?

23 A. That's in New Jersey.

24 Q. And once you arrived at the hospital, what happened?

25 A. A doctor came, a nurse, they took my clothes off.

E4TUMCC2

"Biurny Peguero"

1 Q. And were you examined by a doctor and sexual assault
2 examiner?

3 A. Yes.

4 Q. Did they take photographs of you as well?

5 A. Yes.

6 Q. Did you have injuries when you arrived at the hospital?

7 A. Yes.

8 Q. When you woke up on the morning of September 18, 2005, did
9 you have any of those injuries?

10 A. You mean before everything happened?

11 Q. Yes.

12 A. No.

13 Q. September 17, before you went out that night --

14 A. Yeah?

15 Q. -- did you have any of those injuries?

16 A. No, not at all.

17 Q. I'm showing you what's already been admitted into evidence
18 as People's 6 through 15.

19 Just take a look at those and let me know when you are
20 done looking at them.

21 A. I'm done.

22 Q. OK.

23 Can you just pick each one up and tell us what the
24 number on each one is and tell us what is depicted in the
25 photo?

E4TUMCC2

"Biurny Peguero"

1 A. 15 is my elbow.

2 Q. If you can show us?

3 What is pictured in that photo?

4 A. My elbow.

5 Q. Is there anything else pictured or anything about your
6 elbow that you notice in that photograph?

7 A. Bruises.

8 Q. Where did you get those bruises?

9 A. He did it to me.

10 Q. The defendant?

11 A. Yeah.

12 Q. Did you have those bruises to your elbow before you were
13 taken by the defendant?

14 A. No.

15 Q. Move on to the next one.

16 A. 14.

17 Q. Can you please show us what that is?

18 A. My arm.

19 Q. And what's depicted in that photograph?

20 A. Bruises.

21 Q. Can you point to where it is?

22 OK.

23 And how did you get those bruises?

24 A. He did those bruises to me, too.

25 Q. 'He', the defendant?

E4TUMCC2

"Biurny Peguero"

1 A. Yeah.

2 Q. OK.

3 What number is that?

4 A. 13.

5 Q. What is that a picture of?

6 A. My arm.

7 Q. And what is shown in that photograph?

8 A. Bruises.

9 Q. And do you know which arm that is?

10 A. My left.

11 Q. OK.

12 And how did you get those bruises?

13 A. He did it that night, the original guy.

14 Q. The defendant?

15 A. Mm hmm.

16 Q. OK.

17 What's the next one?

18 A. My stomach.

19 Q. What number is that?

20 A. 12.

21 Q. And what is shown in that photograph?

22 A. Bruises.

23 Q. OK.

24 Can you point to them for us?

25 Q. And how did you get those bruises?

E4TUMCC2

"Biurny Peguero"

1 A. The defendant did it to me.

2 Q. What's in the next photograph?

3 what number is that?

4 A. 11. 11.

5 Q. What's depicted in that photograph?

6 A. My shoulder.

7 Q. Can you show us, please?

8 And what is that?

9 A. That's a bite.

10 Q. Whose bite mark is that?

11 A. The defendant.

12 Q. Did you have that bite mark prior to that night?

13 A. No. You can even see it in the pictures.

14 Q. What?

15 A. You can see that in the pictures, that in the club, I
16 had -- I mean, I can see in the picture. You can see my
17 elbows. I don't have that.

18 Q. What's the next picture?

19 A. 10.

20 Q. OK.

21 And what is that a picture of?

22 A. My shoulder.

23 Q. And what does that show?

24 A. The same bite.

25 Q. OK.

E4TUMCC2

"Biurny Peguero"

1 A. 9 is my arm.

2 Q. Which arm, if you know?

3 A. I don't know.

4 Q. OK. What's pictured there? Can you show us?

5 A. A bruise.

6 Q. How did you get that bruise?

7 A. The defendant did it to me.

8 Q. OK.

9 What's next?

10 A. Number 8.

11 Q. And what's pictured there?

12 A. My arm.

13 Q. And do you know which arm?

14 A. No.

15 Q. And what's pictured there?

16 A. A bruise.

17 Q. How did you get those bruises?

18 A. The defendant did it to me.

19 Q. OK.

20 A. This is number 7.

21 Q. What's depicted there?

22 A. That's my arm.

23 Q. Do you know which arm?

24 A. My left.

25 Q. And what to you see there?

E4TUMCC2

"Biurny Peguero"

1 A. Bruises.

2 Q. And who did those bruises?

3 A. The defendant.

4 Q. What's the next photograph?

5 A. Number 6.

6 Q. And what is that a photograph of?

7 A. My face.

8 Q. Is that how you looked that night when you arrived at the
9 hospital?

10 A. Yeah.

11 Q. OK.

12 You can put the photos down.

13 In all of those photographs depicting those injuries,
14 at what point in time in the night did the defendant inflict
15 those injuries upon you?

16 A. Excuse me?

17 Q. When did he cause those injuries to you?

18 A. When he was raping me.

19 Q. When you were at the hospital, did they then perform a
20 pelvic exam on you?

21 A. I don't know.

22 Q. A gynecological exam?

23 A. Yes.

24 Q. Approximately how long did the exam last?

25 A. I don't know.

E4TUMCC2

"Biurny Peguero"

1 Q. Did they also run tests while you were there?

2 A. Yeah.

3 Q. And did they draw your blood?

4 A. I don't remember.

5 Q. Did they prescribe you medications?

6 A. Yes, they gave me antibiotics.

7 Q. Do you know in of if they gave you anything else?

8 A. No.

9 Q. Did there come a time when a detective came to the hospital
10 and spoke with you?

11 A. Yes.

12 Q. Did you tell her that you were raped?

13 A. Yes.

14 Q. Did you tell her how many men had raped you?

15 A. I don't remember.

16 Q. Did you tell her the entire incident?

17 A. No. I don't remember.

18 Q. Did you held her that you had been raped that night?

19 A. Yeah, I have did.

20 Q. Did you tell her the circumstances that led up to you being
21 raped?

22 A. Yes.

23 Q. Did you also tell the doctor and examiner what had happened
24 to you?

25 A. Yes.

E4TUMCC2

"Biurny Peguero"

1 Q. What happened after you left the hospital?

2 A. They took me to the city, to New York.

3 Q. And did you meet with Detective Arbuiso?

4 A. Yes.

5 Q. Once you I arrived in New York?

6 A. Yes, I did.

7 Q. And what did you do next?

8 A. He was driving me around the restaurant, and then he was
9 trying for me to remember where they took me at and he was just
10 driving around to see if I can recognize anyplace.

11 Q. And were your friends with you still at that point, if you
12 recall?

13 A. Aurora.

14 Q. I'd like to direct your attention to approximately five
15 days later after this incident.

16 Did there come a point when you went to the District
17 Attorney's office?

18 A. Yes.

19 Q. And were photographs taken of you on that date?

20 A. Yes.

21 Q. I'm showing you what I previously marked as People's 16
22 through 20 for identification.

23 If you can take a look at these and let me know when
24 you are done looking at them.

25 A. I'm done.

E4TUMCC2

"Biurny Peguero"

1 Q. Do those photographs fairly and accurately depict the way
2 that you looked approximately five days after this incident?

3 A. Yes.

4 MR. LARKIN: And then I think that the transcript
5 reflects that those 16 through 20 were offered in evidence.
6 And the next question is 223, line 8.

7 (Mr. Larkin and Ms. Zgodny reading)

8 "Q You can use 16 through 20. Tell us what number you are
9 looking at and what the photograph shows and if you can just
10 show us?

11 A. 16, that's my arm.

12 Q. OK.

13 And what does 16 show?

14 A. Bruises in my arm.

15 Q. If you could hold it up so we can see it?

16 What does 17 show?

17 A. Bruises.

18 Q. Can you turn it so we can see?

19 A. Sorry, this is 19.

20 Q. OK.

21 What does 19 show?

22 A. Bruises in my legs.

23 Q. OK.

24 What is the next one?

25 A. 20.

E4TUMCC2

"Biurny Peguero"

1 Q. What does 20 show?

2 A. My leg.

3 Q. And what does it show about your leg?

4 A. Bruises.

5 Q. The next one?

6 A. 18.

7 Q. What does it show?

8 A. My arm.

9 Q. And what about your arm?

10 If you can turn it so we can see it?

11 A. Bruises.

12 Q. And next?

13 A. 17. My arm, bruises.

14 Q. OK.

15 Is that all the photographs?

16 A. Yes.

17 Q. The injuries depicted in People's 16 through 20, how did
18 you get those injuries?

19 A. The defendant did it to me.

20 Q. And when did he do that to you?

21 A. The 18th of --

22 Q. September?

23 A. -- September of 2005.

24 Q. At what point in the night did he cause those injuries to
25 you?

E4TUMCC2

"Biurny Peguero"

1 A. When he was raping me.

2 Q. I'd like to direct your attention back to that time that
3 when you were at the hospital.

4 What happened to all of your belongings?

5 A. They took it.

6 Q. The police? Do you know who took it?

7 A. No, people from the hospital.

8 Q. OK.

9 I'm showing you what's been previously marked as
10 People's 33 for identification.

11 Have you seen this envelope and the contents of this
12 envelope prior to testifying today?

13 A. Yes.

14 Q. Do you know what is need that envelope?

15 A. My belt.

16 Q. When did you look at that?

17 A. A couple of minutes ago today.

18 Q. OK.

19 Was Detective Arbuiso there when that was opened?

20 A. Yeah.

21 Q. Is that the same belt you were wearing that night?

22 A. Yes."

23 MR. LARKIN: And then the record shows that the belt
24 was admitted into evidence.

25 (Mr. Larkin and Ms. Zgodny reading)

E4TUMCC2

"Biurny Peguero"

1 "Q Looking at that the belt, Biurny, can you hold it up for us
2 and show where it's broken?

3 A. Over here.

4 Q. OK.

5 That night, how was it positioned on you? Can you
6 stand up and show us how it was on you? Just hold it on you.

7 And where is it broken on the belt?

8 A. This piece over here.

9 Q. How is it connected?

10 A. Sorry?

11 Q. How was it connected?

12 A. Like that. It should go like this.

13 Q. Is that where the clasp is or is the clasp somewhere else
14 on the belt?

15 A. Somewhere else. Over here.

16 Q. You can sit.

17 Prior to that night, was that belt ever broken before?

18 A. No.

19 Q. How did the belt get broken that night?

20 A. He broke the belt.

21 Q. The defendant?

22 A. Yes.

23 Q. At what point did he break the belt?

24 A. When he was trying to take my pants off.

25 Q. I'd like to direct your attention to September 25, 2006 --

E4TUMCC2

"Biurny Peguero"

1 or 2005, I'm sorry, approximately seven days after this
2 incident.

3 Were you at the Special Victims Unit at approximately
4 10:50 p.m. that night?

5 A. Yes.

6 Q. And did you view a lineup on that night?

7 A. Yes.

8 Q. Do you remember how many men were in that lineup?

9 A. Five.

10 Q. Did you see anyone in the lineup that you recognized?

11 A. Yes.

12 Q. Who did you recognize?

13 A. Number 5.

14 Q. Where did you recognize him from?

15 A. From that night.

16 Q. And which guy was he that night?

17 A. The original guy.

18 Q. Was that guy the defendant?

19 A. Yes.

20 Q. And what number was he?

21 A. 5.

22 Q. Is that the same man that you see in court today?

23 A. Yes.

24 Q. Can you tell us what happened when you recognized him at
25 the lineup?

E4TUMCC2

"Biurny Peguero"

1 A. I started crying.

2 Q. How long did it take for you to recognize him when you
3 viewed the lineup?

4 A. I was looking one by one. When I saw him, I recognized him
5 right away.

6 Q. When you viewed the lineup, how sure were you when you
7 picked him out?

8 A. 110 percent.

9 Q. And, as you sit here today, how sure are you he' the
10 original guy that got into your car?

11 A. 110 percent.

12 Q. And the same guy that caused those injuries?

13 A. Yes.

14 Q. And raped you?

15 A. Yes.

16 Q. I'm showing you what I'm marking myself as People's 27 for
17 identification.

18 Do you recognize People's 27?

19 A. Yeah.

20 Q. What do you recognize that to be?

21 A. The original guy.

22 Q. And what is that a picture of?

23 A. Sorry?

24 Q. Is that a picture of the lineup that you viewed?

25 A. Yeah.

E4TUMCC2

"Biurny Peguero"

1 Q. On September 25, 2005?

2 A. Yeah.

3 Q. Does it fairly and accurately depict the way the lineup
4 looked that night?

5 A. Yeah."

6 MR. LARKIN: And then People' 27 is marked into
7 evidence.

8 Now page 231, line 25.

9 (Mr. Larkin and Ms. Zgodny reading)

10 "Q I' showing you what I previously marked as People's 26.

11 I would like you to take a look at People's 26.

12 Do you recognize that photograph?

13 A. Yes.

14 Q. Who is depicted in that photograph?

15 A. The defendant.

16 Q. Is that the way he looked on September 18, 2005?

17 Does it fairly and accurately depict the way he looked
18 on September 18, 2005?

19 A. To me he looks different because I saw him with a hat on.

20 Q. Other than the fact that he's not wearing a hat, does it
21 look like him?

22 A. Yeah."

23 MR. LARKIN: And the photo was admitted into evidence.

24 Now picking up at page 234, line 23.

25 (Mr. Larkin and Ms. Zgodny reading)

E4TUMCC2

"Biurny Peguero"

1 "Q Ms. Peguero, when you were in the car telling your friends
2 what had happened to you, did you ever tell any of them that
3 only one guy raped you?

4 A. No.

5 Q. Did you tell them that only two guys raped you?

6 A. No."

7 MR. LARKIN: Moving to page 236, line 25.

8 (Mr. Larkin and Ms. Zgodny reading)

9 "Q In the weeks following what happened to you on September
10 18, 2005 were you able to leave your house?

11 A. No.

12 Q. Why not?

13 A. I was scared to go out.

14 Q. And did there come a time after this when you missed days
15 at work?

16 A. Two weeks.

17 Q. And for what reason?

18 A. Because I was scared to go out.

19 Q. How often since this incident have you been back out in New
20 York City?

21 A. Very few, and I never went to clubs again here.

22 MR. LARKIN: And that concludes the direct of the
23 plaintiff -- excuse me -- the direct of the complaining
24 witness. I apologize.

25 THE COURT: You are done.

E4TUMCC2

"Biurny Peguero"

1 MR. LARKIN: Yes.

2 THE COURT: Mr. Garber, are you going to read anymore
3 from the trial transcript?

4 MR. GARBER: Yes.

5 THE COURT: Mr. Cohen, you are going to be on the
6 stand?

7 (Pause)

8 THE COURT: What are we hearing now?

9 MR. GARBER: This is the direct examination of Lisa
10 Miner from the Office of the Chief Medical Examiner. It starts
11 on page 308.

12 THE COURT: Lisa Miner?

13 MR. GARBER: Lisa Miner.

14 THE COURT: How do you spell it?

15 MR. GARBER: M-I-N-E-R.

16 MR. LARKIN: It is Misner.

17 MR. GARBER: Misner -- it is a typo.

18 Question, on line 23, page 308.

19 (Mr. Garber and Mr. Cohen reading)

20 "Q Did you obtain any biological material from the rape kit?

21 A. Yes.

22 Q. What biological material did you obtain?

23 A. We detected the presence of amylase on the dried secretions
24 from the left arm bite mark and --

25 Q. OK, go ahead.

E4TUMCC2

"Lisa Misner"

1 A. Amylase is a protein that is commonly found in saliva that
2 would help you break down starch, any items like bread, pasta,
3 things like that.

4 Q. Does amylase have DNA?

5 A. No.

6 Q. Where would the DNA come from?

7 A. The DNA from the saliva, of course, would come from the
8 skin cells.

9 Q. And did you test the amylase in connection with this case?

10 A. Yes.

11 Q. What kind of tests were performed?

12 A. We attempted to perform DNA extraction and that sample then
13 reached the quantitation stage where we tried to determine how
14 much DNA was in that sample. There was no DNA found in that
15 sample.

16 Q. OK.

17 What does that mean, extraction? Would you explain to
18 us?

19 A. The DNA is found inside yourselves. We need to break open
20 the cells and free the DNA so we can perform our tests on it.

21 Q. Were you able to obtain DNA from these profile amylase?

22 A. No, we actually did not detect DNA in that sample.

23 Q. Can you explain to us why that might be?

24 A. It could be that there were not enough skin cells present
25 in that sample for us to obtain the amount of DNA that we need

E4TUMCC2

"Lisa Misner"

1 to perform our tests.

2 Q. You may continue.

3 A. I think I was --

4 Q. You were done?

5 A. I was done.

6 Q. OK.

7 Did you perform any other tests on the rest of these
8 specimens in the rape kit?

9 A. Yes. We routinely test for the presence of semen and
10 amylase on various items of a sexual assault kit.

11 Q. Were semen present on any of the sexual assault kit items
12 you received for Biurny Peguero?

13 A. No."

14 MR. GARBER: That is the end of Misner.

15 Now we are going to do the direct of Detective Robert
16 Arbuiso and portions of the direct by Shandra Strain.

17 THE COURT: So you are ADA Strain and Mr. Cohen will
18 be reading the testimony of Detective Arbuiso?

19 MR. GARBER: Correct. Page 328, line 8.

20 (Mr. Garber and Mr. Cohen reading)

21 "Q Detective, I'd like to direct your attention to September
22 18 of 2005. Were you working on that date?

23 A. Yes, I was.

24 Q. And where were you working?

25 A. At the Manhattan Special Victims Squad.

E4TUMCC2

"Robert Arbuiso"

1 Q. Did there come a time when you received a telephone call
2 from a Detective Rak at the Hudson County prosecutor's office?

3 A. Yes.

4 Q. And what happened pursuant to that phone call?

5 A. A short time later I met Detective Rak, the victim and her
6 two friends on the Manhattan side of the Lincoln Tunnel.

7 Q. When you say "the victim and her two friends," who are you
8 referring to?

9 A. Aurora Pujols and Maria Sosa.

10 Q. And who was the victim that you met with on that date?

11 A. Biurny Peguero.

12 Q. Approximately what time did you meet with them on that
13 date?

14 A. It was early afternoon. Maybe 11, 12 o'clock.

15 Q. And when you met with Detective Rak, did she turn over
16 certain evidence to you?

17 A. Yes.

18 Q. What evidence did she turn over to you?

19 A. A sexual assault evidence kit, a bag with some clothing and
20 a smaller bag with a metallic belt."

21 MR. GARBER: Now we are going to page 334, starting on
22 line 12.

23 (Mr. Garber and Mr. Cohen reading)

24 "Q Detective, on September 18, 2005 when you met with the
25 complainant and two of her friends, what did you do when you

E4TUMCC2

"Robert Arbuiso"

1 met with them?

2 A. I brought them to my office where I interviewed them."

3 MR. GARBER: Page 338, starting line 21.

4 (Mr. Garber and Mr. Cohen reading)

5 "Q How did it come to be that he came to your office to meet
6 with you?

7 A. The owner of the car contacted him on his Nextel and I
8 spoke with him over the walkie-talkie."

9 MR. GARBER: Let me back up to line 17 on page 338.

10 (Mr. Garber and Mr. Cohen reading)

11 "Q Did Mr. McCaffrey come to your office at the Manhattan
12 Special Victims Squad?

13 A. Yes, he did.

14 Q. What did you initially tell him --

15 How did it come to be that he came to your office to
16 meet with you?

17 A. The owner of the car contacted him on his Nextel and I
18 spoke with him over the walkie-talkie.

19 Q. And what happened next?

20 A. I told him I'm investigating a missing cell phone and I
21 believe he has it and I would like him to bring it to me and
22 come to my office, and I gave him directions.

23 Q. And whose cell phones were you referring to?

24 A. Aurora's.

25 Q. And did the defendant come into your office?

E4TUMCC2

"Robert Arbuiso"

1 A. Yes, he did."

2 MR. GARBER: 341, line 3.

3 (Mr. Garber and Mr. Cohen reading)

4 "Q After you read him those Miranda warnings and signed them,
5 did you take a statement from the defendant?

6 A. Yes, I did.

7 Q. And how did you begin that statement?"

8 I guess that's it for there. We are done with
9 Detective Arbuiso.

10 Now we are going to skip to -- wait a second.

11 MR. COHEN: There was more.

12 MR. GARBER: There was more. I apologize.

13 Could we pick up on page 342 at the top, line 4.

14 Are you there?

15 MR. COHEN: Yes.

16 (Mr. Garber and Mr. Cohen reading)

17 "Q Detective, can you tell us what you said to the defendant
18 and how he responded?

19 MR. GARBER: 342, line 6.

20 MR. COHEN: I don't have 342 here.

21 MR. GARBER: You don't have 342?

22 MR. COHEN: No.

23 Do you want to just read it?

24 MR. GARBER: Then could I go back and forth, Judge, Q
25 and A? He doesn't have page 342. Could I do Q and A just to

E4TUMCC2

"Robert Arbuiso"

1 move forward right now?

2 THE COURT: You will read both parties?

3 MR. GARBER: Yes.

4 THE COURT: Everybody understands, just make it clear.

5 MR. GARBER: Sure.

6 (Mr. Garber reading)

7 "Q Detective, can you tell us what you said to the defendant
8 respond and how he responded?

9 A. I basically started out asking where he was on that
10 Saturday night and if he was with Ramon.

11 Q. And did you show him a photograph of anyone?

12 A. Yes, I did.

13 Q. Who did you show him a photograph of?

14 A. The victim.

15 Q. And who was that?

16 A. Biurny.

17 Q. Biurny Peguero?

18 A. Yes.

19 Q. And what did Mr. --

20 What did the defendant tell you after he saw the
21 photograph of Biurny Peguero?

22 A. He said that they pulled up to a car that she was sitting
23 in, he got in the front passenger seat of the car, she was
24 sitting in the backseat. He said he was trying to rap to her,
25 talk to her, if she wanted to hang out. He said she did but

E4TUMCC2

"Robert Arbuiso"

1 she was too drunk to drive.

2 So he offered to park her car for her. He then drove
3 the car to the 218th Street parking lot where he parked it.
4 Then he said that he drove his friend Ramon home to the Bronx
5 and he took her along for the ride.

6 Q. And did he indicate how many people he was with inside the
7 car?

8 A. Yes.

9 Q. How many?

10 A. Mr. McCaffrey and three other males and the victim."

11 MR. GARBER: Now we go to Detective Joanna Rak, page
12 372.

13 Do you have that, Mr. Cohen?

14 MR. COHEN: Yes, I do.

15 MR. GARBER: Starting on line 25, this is now Shandra
16 Strain, Detective Rak.

17 (Mr. Garber and Mr. Cohen reading)

18 "Q Detective, while you were at the hospital, did you observe
19 any injuries to Ms. Peguero?

20 A. Yes, I did.

21 Q. Could you describe for us what those injuries were?

22 A. Those injuries were abrasions, some red marks, in my
23 opinion they looked like bite marks, all over her body.

24 Q. And did there come a time --

25 Did there come a time when you took photographs of

E4TUMCC2

"Joanna Rak"

1 those injuries?

2 A. Yes.

3 Q. And was that at the hospital?

4 A. Yes."

5 MR. GARBER: Now it is Farkhanda Farooqi and you guys
6 are up.

7 THE COURT: So you are switching?

8 MR. GARBER: They are going to do the cross of Rak and
9 direct of --

10 THE COURT: So we are switching or not switching?

11 MR. GARBER: We are switching. They are going to pick
12 up the cross of Detective Rak and then they are going continue
13 to another witness, Farkhanda Farooqi.

14 MS. ZGODNY: Cross designations of Detective Rak and
15 then we will do it.

16 THE COURT: That's fine.

17 MR. LARKIN: Co-counsel will be the witness.

18 So this is page 370 of the transcript, line 6.

19 THE COURT: Just make it clear, you are who?

20 MR. LARKIN: I am Assistant DA Shandra Strain and
21 Ms. Zgodny is Detective Joanna Rak.

22 THE COURT: All right. Ready?

23 MS. ZGODNY: Yes.

24 THE COURT: Let's go.

25 MR. LARKIN: And it is Joanna Rak, J-O-A-N-N-A R-A-K.

E4TUMCC2

"Joanna Rak"

1 (Mr. Larkin and Ms. Zgodny reading)

2 "Q Good morning, Detective.

3 A. Good morning.

4 Q. Detective, where do you work?

5 A. Hudson County Prosecutor's Office.

6 Q. What is your job there? What is your assignment?

7 A. I am a detective with the Special Victim's Unit.

8 Q. And how long have you been a detective with the Special
9 Victim's Unit of the Hudson County Prosecutor's Office?

10 A. Approximately two years.

11 Q. And where were you assigned prior to that?

12 A. To various trial teams and sexual assault -- I'm sorry --
13 the Sex Offenders Unit prior to that."

14 MR. GARBER: Just to clarify, this is actually the
15 direct of Joanna Rak, so there was some confusion, I thought
16 they going to cross. Just so the jury knows, this is now the
17 direct and they are probably going to re-read some of her other
18 stuff and move on to cross.

19 MR. LARKIN: She is the People's witness, and I am the
20 Assistant DA --

21 MR. GARBER: I know.

22 THE COURT: But it had been said that you were going
23 to do the cross.

24 MS. ZGODNY: Cross designations. I apologize for the
25 confusion, cross designations.

E4TUMCC2

"Joanna Rak"

1 THE COURT: So this is the direct examination of
2 Detective Rak?

3 MR. LARKIN: Yes. Line 17.

4 (Mr. Larkin and Ms. Zgodny reading)

5 "Q Where were you assigned prior to that?

6 A. To various trial teams and sexual assault -- I'm sorry --
7 the Sex Offenders Unit prior to that.

8 Q. How long have you been a police officer or detective?

9 A. Approximately nine years.

10 Q. And during your time as a detective and police officer,
11 approximately how many arrests have you either made or assisted
12 in?

13 A. At least over 100.

14 Q. And how many of those were for sexual assault
15 approximately?

16 A. Arrests or cases?

17 Q. Arrests.

18 A. I would say have say at least 40.

19 Q. Detective, I'd like direct your attention to September 18
20 of 2005. Were you working on that date?

21 A. I was on call that day, yes.

22 Q. And where were you on call or where were you working?

23 A. I was still working for the Hudson County Prosecutor's
24 Office. Our procedures are, on the weekends you have an
25 on-call detective approximately 24 hours. So on that

E4TUMCC2

"Joanna Rak"

1 particular day I was the on-call detective.

2 Q. And did there come a time at approximately 9:00 a.m. on the
3 that date when you responded to a call to Christ Hospital in
4 New Jersey?

5 A. Yes, there was.

6 Q. When you responded to that location, did you meet with a
7 complainant by the name of Biurny Peguero?

8 A. Yes, I did.

9 Q. Who responded to you?

10 A. It was the SANE nurse, Farooqi.

11 Q. Did you have an opportunity while there to observe
12 Ms. Peguero?

13 A. Yes, I did.

14 Q. What, if any, observations did you make about her?

15 A. Ms. Peguero was extremely distraught. She --

16 Objection.

17
18 Q. You can continue.

19 A. She was visibly shaken. She was in a lot of pain. Her
20 movements were restricted because of the amount of pain that
21 she was in. And she also stated that, you know, she was
22 sexually assaulted.

23 Q. And did she indicate to you how many -- how many people had
24 sexually assaulted her?

25 A. She said three.

E4TUMCC2

"Joanna Rak"

1 The Court: You mentioned, by the way, you were with
2 Ms. Farooqi and you used the acronym SANE?

3 The Witness: Your Honor, SANE is an acronym for
4 sexual assault nurse examiner.

5 Q. Detective, while you were at the hospital, did you observe
6 any injuries to Ms. Peguero?

7 A. Yes, I did.

8 Q. Could you describe for us what those injuries were?

9 A. Those injuries were abrasions, some red marks, in my
10 opinion they looked like bite marks all over her body.

11 Q. Did there come a time when you took photographs of her
12 injuries?

13 A. Yes.

14 Q. Was that at the hospital?

15 A. Yes.

16 Q. Detective, did you photograph every single one of her
17 injuries?

18 A. No.

19 Q. Can you explain to us why not?

20 A. Because she was in distress, meaning she was in pain, when
21 she turned on the bed in certain positions. So I didn't want
22 to force her to be in any position that was uncomfortable for
23 her.

24 And she was crying during -- primarily most of the
25 time she was crying because she was so distraught that I

E4TUMCC2

"Joanna Rak"

1 decided that it was best to stop taking the photos but yet
2 still have it documented by SANE Farooqi.

3 Q. And when Nurse Examiner Farooqi documented those, did you
4 see where she documented those?

5 A. Yeah.

6 Q. Where was that?

7 A. All over her body, from head to toe, on the diagram.

8 Q. And was that diagram part of her medical records?

9 A. Yes.

10 Q. OK. I'm showing you what's already been admitted into
11 evidence as People's 6 through 15. Could you take a look at
12 these and let me know when you have finished looking at them?

13 A. I'm done.

14 Q. Do you recognize those photographs?

15 A. Yes, I do.

16 Q. What are those photographs?

17 A. Those are the photograph I took of Ms. Peguero's injuries.

18 Q. Do those photographs fairly reflect the way she looked on
19 that night or that morning when you met with her?

20 A. Yes.

21 Q. Could those photographs document every single one of her
22 injuries?

23 A. No.

24 Q. I'm showing you what is already in evidence as People's 21,
25 which is Ms. Peguero's medical records which includes that

E4TUMCC2

"Joanna Rak"

1 chart that you described Nurse Examiner Farooqi as filling out.

2 Does that chart fairly and accurately reflect the
3 other injuries that you observed that were not photographed?

4 A. Yes.

5 Q. Did there come a time when a sexual assault kit was
6 presented to you by nurse Farooqi?

7 A. Yes.

8 Q. And what did you do with that kit?

9 A. I maintained it in my possession until I transferred it
10 over to Detective Arbuiso.

11 Q. Arbuiso?

12 A. I always have problems with his name, yes.

13 Q. Was that the detective in the Manhattan Special Victims
14 Squad?

15 A. Yes.

16 Q. And did there come a time when you turned over other items
17 to him on that date?

18 A. Yes.

19 Q. What were those items?

20 A. Those were the items that I obtained from the victim at the
21 hospital.

22 Q. Do you know what those items included?

23 A. I don't recall at this time.

24 Q. Did they include her clothing?

25 A. Yes.

E4TUMCC2

"Joanna Rak"

1 Q. What about a belt?

2 A. If it was part of her clothing I would have secured that as
3 well.

4 Q. OK.

5 Detective, I'm showing you what's already admitted
6 into evidence as People's 35.

7 Do you recognize People's 35?

8 A. Yes, I do.

9 Q. What is People's 35?

10 A. It's our sexual assault evidence collection kit.

11 Q. Detective, on that date when you met with Ms. Peguero, did
12 you take a detailed interview of her?

13 A. No.

14 Q. Or of her friends?

15 A. No.

16 Q. Can you explain to us why not?

17 A. Because the alleged crime occurred in the State of New
18 York. I am a detective from the State of New Jersey. It's a
19 jurisdictional issue. Not to mention the fact that other
20 people -- other detectives have different methodology and I
21 don't want to overstep my bounds by initiating an investigation
22 that was not mine to do.

23 Q. When you respond to Christ Hospital on September 18, what
24 was your purpose in responding?

25 A. I -- my purpose was to basically gather the evidence and

E4TUMCC2

"Joanna Rak"

1 the victim and to assist in a courtesy fashion to present the
2 evidence to the detective that would take over the
3 investigation."

4 MR. LARKIN: No further designations.

5 THE COURT: We are going to a different witness?

6 MR. LARKIN: Yes. We are up to Farooqi.

7 THE COURT: You are ADA Strain?

8 MR. LARKIN: Yes. This is Nurse Examiner Farooqi.
9 This is the direct examination. It starts on page 389, line
10 16.

11 THE COURT: Her first name is?

12 MR. LARKIN: Farkhanda, F-A-R-K-H-A-N-D-A. And the
13 last name is Farooqi, F-A-R-O-O-Q-I.

14 THE COURT: Farkhanda Farooqi?

15 MR. LARKIN: Yes.

16 THE COURT: Please proceed.

17 (Mr. Larkin and Ms. Zgodny reading)

18 "Q Can you tell us where you work?

19 A. I work -- I work with the Hudson County Prosecutor Office.

20 Q. And what is your job there?

21 A. I am the SANE coordinator.

22 Q. What does that mean?

23 A. Sexual assault response team and sexual assault nurse
24 examiner. I'm the director of Hudson County. And also, I'm
25 certified sexual assault nurse examiner.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. How long have you been a certified sexual assault nurse
2 examiner?

3 A. Three years now.

4 Q. And how long have you been a nurse?

5 A. I'm graduated from school of nursing 1986.

6 Q. And are you a registered nurse?

7 A. Yes.

8 Q. When you graduated from nursing school, what type of work
9 did you get into?

10 A. I was a medicine emergency room nurse.

11 Q. An emergency room nurse?

12 A. Yes.

13 Q. Was that here in the United States?

14 A. Yeah. I'm in the United States since 1992 and I'm work as
15 ER nurse since 1992, trauma and emergency room.

16 Q. What is your educational background?

17 A. I was district nurse and B.S. degree.

18 Q. Are you currently in school still?

19 A. Yes.

20 Q. And what are you in school for?

21 A. Actually I went for master program but I still have to take
22 credits because of the other country education, you know?

23 Q. And at this point you're also studying to get your master's
24 in nursing?

25 A. Yes.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. Could you tell us, what is the sexual assault response
2 team? What does that mean? What does that program entail?

3 A. Sexual response team mean there's a three different
4 departments, like law enforcement, nurse examiner and advocate.

5 Q. And which of those portions do you belong to?

6 A. I am a nurse examiner.

7 Q. OK.

8 And what does a nurse examiner do?

9 A. Nurse examiners, basically the victim of sexual assault, we
10 interview them and physical exam and document any injuries and
11 stuff.

12 Q. Have you received, yourself, specific training related to
13 sexual assault forensic examination?

14 A. Yes, I'm board certified by the Board of Nursing and there
15 is a training, like special training, on sexual assault nurse.
16 This basic education is the district nurses, the one that go
17 for the training, it is a 40-hour class training and like
18 pelvic exams and physical injuries.

19 Q. And that training is in addition to your training as a
20 registered nurse?

21 A. That's right. That's correct.

22 Q. Is that training specifically relative to sexual assault
23 examination?

24 A. Yes.

25 Q. Approximately, in your entire career as a nurse and also a

E4TUMCC2

"Farkhanda Farooqi"

1 sexual assault nurse examiner, how many women have you examined
2 whose complaint is sexual assault?

3 A. Since 2003 till now, I did like 50 to 55 cases
4 independently.

5 Q. Are those the cases in which you were the sexual assault
6 nurse examiner?

7 A. No. I'm doing as assisting with the cases since 1998 and
8 approximately 70 to 75 cases total.

9 Q. Total.

10 But how many have you been the actual examiner on?

11 A. 50, 55.

12 Q. Approximately, during your entire career as a nurse and as
13 a nurse examiner, how many gynecological exams have you
14 performed?

15 A. Many. Because I also work as labor and delivery nurse, and
16 more than maybe 200.

17 Q. OK.

18 And can you explain what takes place when you conduct
19 a gynecological exam in reference to a sexual assault case?
20 What are the procedure that you follow?

21 A. The sexual assault exam?

22 Q. Yes.

23 A. OK, basically we interview the victim and whatever
24 complaint they have. And then we do physical exam and vaginal
25 exam.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. And when you perform the vaginal exam, what does that
2 entail?

3 A. That's the spectrum insertion and collecting evidence like
4 doing surgical and vaginal swabs.

5 Q. Have you performed gynecological or vaginal exams in both
6 sexual assault cases and non-sexual assault cases?

7 A. Yes."

8 MR. LARKIN: And then the witness is qualified as an
9 expert by the court in that case in the area of forensic exams
10 and sexual assault victims.

11 (Mr. Larkin and Ms. Zgodny reading)

12 "Q Nurse Farooqi, I'm showing you what's previously been
13 entered into evidence as People's 21.

14 Can you take a look at People's 21 for me? Do you
15 recognize People's 21?

16 A. Yes.

17 Q. Are those the medical records of Biurny Peguero from
18 September 18, 2005?

19 A. That's right.

20 Q. And have you reviewed those records prior to coming to
21 court today?

22 A. Yes.

23 Q. OK.

24 Did you perform any examinations of Biurny Peguero?

25 A. Yes.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. What, if any, role did you play in the examination of
2 Ms. Peguero?

3 A. Basically, I'm the one who triaged her and checked her
4 physical injuries and interview her, and also did the physical
5 exam and pelvic exam.

6 Q. When she presented to Christ Hospital on September 18,
7 2005, what was her chief complaint?

8 A. She complained she was sexually assaulted.

9 Q. Did there come a time when you conducted an examination of
10 her?

11 A. I'm sorry?

12 Q. Did you conduct an examination of her?

13 A. Yes.

14 Q. Can you tell us from the beginning what happened once you
15 met with Ms. Peguero? What did you do?

16 A. I spoke with the patient, and she said she was assaulted
17 and she was crying. She was very upset. She was brought by
18 two other friends. There was, like, couple of friends with her
19 who brought her to ER.

20 So we put her in the room and give her a little time
21 to relax. And then we did vital sign check and everything.
22 And ER physician who medically screened her. She was given --
23 because she had multiple injuries on her body, and she was
24 given tetanus shot for that and the doctor told me that she's
25 cleared to do forensic exam.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. And did you then conduct a forensic exam?

2 A. Yes.

3 Q. And during the course which you conducted the forensic
4 exam, did she tell you what had happened to her?

5 A. Yes. She told me she got assaulted in New York, somewhere
6 in the parking lot. She came out of bar around, like, 4:30 in
7 the morning, and she was attacked by three unknown male. And
8 she was sexually assaulted, vaginal intercourse, by them.

9 Q. And did she indicate to you how many men had sexually
10 assaulted her?

11 A. Three.

12 Q. Did she indicate whether one of them, in addition to
13 sexually assaulting her, had done anything else?

14 A. There was one male who was biting her and -- with vaginal
15 penetration.

16 Q. Did she indicate that that male who was biting her also
17 raped her?

18 A. Yes.

19 Q. Did she indicate whether or not that male who was biting
20 her and raped her assaulted her?

21 A. She was assaulted by three of them. There were three
22 people. Three of them had vaginal intercourse with her and one
23 of them was biting when he was having sex with her.

24 Q. Nurse Examiner Farooqi, are there any vaginal injuries
25 documented in the medical records from your exam of her?

E4TUMCC2

"Farkhanda Farooqi"

1 A. This victim don't have any vaginal injuries. There was
2 like bruise on her pubic area above the vagina, lower abdomen.

3 Q. Is it consistent with forcible penetration for there not to
4 be vaginal injuries to a woman?

5 A. No, many victims don't have vaginal injuries.

6 Q. Can you explain to us why?

7 A. Because of vagina is very fat and the penis is not a sharp
8 object that can cause injury, you know. Many victims doesn't.
9 Even people who are sexually active or not sexually active
10 don't have injury.

11 Q. In your 50 to 55 cases that you were the sexual assault
12 nurse examiner on, approximately how many of those cases have
13 had vaginal injuries?

14 A. Maybe two or three.

15 Q. OK.

16 Did you observe other injuries to Ms. Peguero's body?

17 A. Yes.

18 Q. Can you tell us what those injuries were?

19 A. She had bite marks and redness all over her body, on her
20 arms, shoulder. There's some redness on her legs too.

21 If you can look at the diagram I have documented
22 abrasions, bruises redness on right arm, and left shoulder she
23 have big bit marks, like 2.5 inch, and redness on her left arm,
24 and multiple abrasions on the left leg and right knee and then
25 she have redness on her pubic region, left abdomen area.

E4TUMCC2

"Farkhanda Farooqi"

1 Q. When you examined Ms. Peguero, did you go through a series
2 of questions with her about what had transpired?

3 A. Yes.

4 Q. Could you she tell you whether or not the perpetrators had
5 used a condom?

6 A. She was unsure.

7 Q. And could she tell you whether or not the perpetrators had
8 ejaculated?

9 A. She was unsure.

10 Q. In your experience, Nurse Farooqi to recover semen or DNA?

11 A. You can't.

12 Q. And if someone wears a condom, is it possible in your
13 experience, to recover semen or DNA?

14 A. You can't.

15 Q. Even if a victim of a sexual assault complains of pain,
16 would you necessarily find vaginal injury?

17 A. No.

18 Q. Can you explain why?

19 A. Because of the vaginal area elasticity, you know, that's
20 why.

21 Q. And are --

22 Is there also natural lubrication which occurs in most
23 women?

24 A. That's true.

25 Q. What happens at that point?

E4TUMCC2

"Farkhanda Farooqi"

1 A. That's -- it's easy penetration.

2 Q. Was Ms. Peguero prescribed medications on September 18,
3 2005?

4 A. Yes.

5 Q. Could you tell us what those medications were?

6 A. She was given tetanus shot because of the bites and the
7 abrasions, and she was given prophylactics which is protocols,
8 standard protocols. We give Zithromax Cipro. She was given
9 plan B to prevent any accidental pregnancy.

10 Q. What are the possible side effects of those medications?

11 A. Mostly of GI, nausea and vomiting.

12 Q. When you took the examination of Ms. Peguero, did you
13 document her injuries somewhere?

14 A. Yes.

15 Q. Where did you document that?

16 A. On the diagram.

17 Q. And that diagram is contained within People's 21?

18 A. If that's the separate or is this --

19 Q. The medical records?

20 A. No."

21 MR. LARKIN: So the court asked a couple of questions:

22 "21 is the --"

23 The Witness: That is the hospital records. Hospital
24 record, I think it separate.

25 Yes, that's true. Yes.

E4TUMCC2

"Farkhanda Farooqi"

1 The Court: All right, so your documentation is
2 contained within People's 21, the medical records, is that
3 right?

4 The Witness: The medical record is kept separate in
5 the hospital. Forensic record, we keep it separate.

6 The Court: All right.

7 The Witness: The hospital don't have. We give them
8 the discharge copy.

9 "The Court: That's this, that's OK."

10 And now ADA Strain continues page 401, line 6.

11 (Mr. Larkin and Ms. Zgodny reading)

12 "Q And are you under a duty as you create those reports to
13 record them accurately?

14 A. Yes, of course.

15 Q. I'm showing you what's previously been marked as People's
16 24.

17 Using People's 24, if you could, with the Court's
18 permission, if you could step down, I'm going to hand you a
19 marker, I'd like for you to use the chart in People's 21 and
20 document for the members of the jury to see the injuries that
21 you noted on Ms. Peguero on September 18, 2005.

22 A. OK."

23 THE COURT: We don't have the exhibit.

24 MS. ZGODNY: No.

25 "Q I'm going to hand you a marker. And a you indicate each

E4TUMCC2

"Farkhanda Farooqi"

1 one, could you please indicate to us where it was and what it
2 was that you observed, and if the measurement of it was taken,
3 what that measurement is?

4 A. Sure.

5 Q. So there you're marking what appears to be the front left
6 shoulder?

7 A. That's right. This is left shoulder. This is bite mark.

8 Q. And what about it made you believe that it was a bite mark?

9 A. Because it's like tooth mark on the patient said that, and
10 this redness around it, it's like basically somebody suck it
11 and bite it too.

12 Q. OK.

13 A. So it's redness like around. You can see the lips mark and
14 the teeth in between. It was, like, 2.5 inch.

15 Then she have redness here.

16 Q. Where were you marking?

17 A. Under her breast, left breast.

18 Q. OK.

19 And you just marked -- I'm sorry.

20 On the left arm you marked two items. Can you tell us
21 what those are?

22 A. Yes. There is like a redness and bruise. And this was
23 bite mark.

24 Q. Again, what made you believe that that was a bite mark?

25 A. Because of teeth. You know, when you -- somebody bite and

E4TUMCC2

"Farkhanda Farooqi"

1 you can see that, still there is teeth marks there and that's
2 what the patient said that, that this bite. Because every
3 injury I was looking at I was asking her how this happen, how
4 this redness happen, how this happen. Because she was putting
5 a lot of effort fighting back and forth and --

6 Q. Fighting back and forth with you?

7 A. With the offenders.

8 Q. Oh, OK.

9 A. During the incident.

10 Q. OK.

11 A. That's what she said. So many injuries, whatever. She
12 have redness and because she was -- because she was making a
13 lot of efforts trying to fight back. But she was tired of the
14 alcohol use and she was not having that energy to fight.

15 Q. OK.

16 A. So...

17 Q. So on the left arm, this is -- OK.

18 A. You see the redness? This just redness, there no bite mark
19 here.

20 Q. Where is that located?

21 A. Pubic area above her.

22 Q. And it is redness?

23 A. Yes, that's redness.

24 This redness here.

25 Q. And you're again pointing -- just so the record is clear,

E4TUMCC2

"Farkhanda Farooqi"

1 you just drew another mark that appears on the right-hand side
2 of her body?

3 Is that the --

4 A. They is her groin area where pubic region. This is on her
5 lower abdomen. Left side. Left side.

6 Q. Is that the left side, or is that the left or right?

7 A. I'm sorry, this is right.

8 Q. OK.

9 A. This is left.

10 These are, like, three bruises.

11 Q. Three bruises on the right arm?

12 A. Yes, the right arm.

13 And there was abrasions over here. This is like --

14 Q. Abrasion on her?

15 A. Knee.

16 Q. OK.

17 A. Her right knee.

18 Q. And did you measure that abrasion?

19 A. Yes. This was, like, one to two centimeter, approximately.

20 Q. What is that that you just marked?

21 A. These are, like, three abrasions on her lower leg -- left
22 lower leg. This is left lower leg. There was no injury on her
23 back at the time I examined her because sometimes bruises
24 appear later.

25 And there was no bleeding. Is also superficial

E4TUMCC2

"Farkhanda Farooqi"

1 abrasions and teeth marks in every bite area.

2 Q. And did you actually observe those teeth marks when you
3 made these observations?

4 A. Yes.

5 That's basically it.

6 Q. Is that all of the marks that are on People's 21?

7 A. That's it.

8 Q. Nurse Farooqi, People's 24, does that fairly and accurately
9 reflect the diagram that you made on September 18, 2005 other
10 than the fact that it's blown up?

11 A. Yes.

12 Q. And does it document all of the injuries that you
13 documented that same night?

14 A. That's right."

15 MR. LARKIN: And then People's 24 is moved into
16 evidence.

17 Picking up at line 18.

18 (Mr. Larkin and Ms. Zgodny reading)

19 "Q Nurse Farooqi, when you indicated that Ms. Peguero told you
20 that she had been raped by three men, did she indicate that
21 occurred in a vehicle?

22 A. She was in her car and she pulled out of that car to move
23 another car around, so...

24 Q. Nurse Farooqi, I'm showing you what's already admitted into
25 evidence as People's 35.

E4TUMCC2

"Farkhanda Farooqi"

1 Do you recognize People's 35?

2 A. Yes.

3 Q. What do you recognize that to be?

4 A. That's the kit that we use for the exam to collect
5 evidence."

6

7 (Continued on next page)

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E4TUMCC2

"Farkhanda Farooqi"

1 Q. And is that the kit that you took on September 18, 2005?

2 A. Yes.

3 Q. How do you recognize it to be that?

4 A. My signature on -- it's my handwriting.

5 Q. And did you turn that kit over to Detective Rak?

6 A. Yes, that's true.

7 Q. Did you also turn over clothing and a belt which belonged
8 to complainant?

9 A. Yes."

10 MR. LARKIN: And that concludes the direct exam of
11 that witness, your Honor.

12 THE COURT: All right. Any other witnesses you are
13 doing now?

14 MR. LARKIN: Not right now.

15 THE COURT: Back to you, Mr. Garber and Mr. Cohen,
16 let's do that.

17 MR. GARBER: Just one moment, your Honor.

18 THE COURT: Okay, let's go.

19 MR. GARBER: Okay. Starting at page 46, Pelagio
20 Delacruz.

21 Now we are on the defense's case at the criminal
22 trial. That is defense witness named Pelagio Delacruz.

23 Examiner is Ronald.

24 THE COURT: Spell the lawyer's name, too, for the
25 record.

E4TUMCC2

"Farkhanda Farooqi"

1 MR. GARBER: Yes. Ronald V-E-N-E-Z-I-A-N-O.

2 THE COURT: All right. Okay, let's proceed.

3 MR. GARBER: Starts on 487, line 25 Mr. Cohen and Mr.
4 Delacruz.

5 (Mr. Garber and Mr. Cohen reading)

6 BY MR. VENEZIANO:

7 "Q. Mr. Delacruz, good afternoon.

8 A. Good afternoon.

9 Q. Now, Mr. Cruz, you understand the set-up here with the
10 interpreter, and how it's going to work?

11 A. Correct.

12 Q. Okay. Now, if I can ask, how old are you, Mr. Cruz?

13 A. Fifty years old.

14 Q. Now, in those 50 years, have you ever had any criminal
15 record, or any involvement with the law of any kind at all?

16 A. Yes.

17 Q. Tell us. Tell us what it is.

18 A. I was incarcerated for selling alcohol illegally.

19 Q. When was that, how long ago was that?

20 A. That was like four years here.

21 Q. It happened four years ago?

22 A. Yes.

23 Q. Okay. But that's not what you do for a living, is it?

24 A. No. I was working in a place, and did not have the
25 appropriate permit.

E4t0mcc3

"Delacruz"

1 Q. Right. So because it didn't have the appropriate permit,
2 you shut it down?

3 A. It is because I was not the owner, I was only working.

4 Q. The -- oh, the place was shut down?

5 A. Yes.

6 Q. And you lost your job along with it?

7 A. Yes.

8 Q. Other than that, anything else, anything of a criminal
9 nature that you were involved in your life?

10 A. No.

11 Q. Okay. Now, are you married or single?

12 A. Married, but separate.

13 Q. Separated?

14 A. Separated.

15 Q. Do you have any children?

16 A. Three.

17 Q. How old are they.

18 A. 20, 19, and 15.

19 Q. Okay. When they were younger, did you support them by the
20 job that you have now, or do you have a job, now, in the
21 garage, as a garage attendant?

22 A. I was working as a parking lot attendant, but it was in
23 different places.

24 Q. All right, where was it?

25 A. That was on Tenth Avenue and 216th.

E4t0mcc3

"Delacruz"

1 Q. Okay. And where did you work before that?

2 A. The job where they -- where I ended up in jail.

3 Q. Meaning the after-hours liquor license?

4 A. After-hours?

5 Q. Is that what you are talking about now?

6 A. Yes.

7 Q. Okay. So is it fair to say that almost all of your adult
8 life, you made a living by being a parking lot attendant and
9 working in that or related jobs, correct?

10 A. In the United States, yes.

11 Q. Okay. Have we met before today?

12 A. I saw you once.

13 Q. But you saw me once, but we never met, did we?

14 A. No.

15 Q. We never spoke to each other?

16 A. No.

17 Q. Okay. Now, did you come down to testify today,
18 voluntarily, or did you need to be subpoenaed?

19 A. Voluntarily.

20 Q. I'm sorry?

21 A. Voluntarily.

22 Q. Voluntarily, okay.

23 I would like you to look at the jury, and starting out
24 on the evening of September 18, 2005, please tell the jury
25 everything you know about what occurred on that date.

E4t0mcc3

"Delacruz"

1 Do you understand my question?

2 A. Correct.

3 Q. Just look right at the jury, talk to the jury, and tell
4 them, entirely in your own words, what occurred and what you
5 saw occur that evening.

6 A. That day, I went to work around 6:00. 6:00.

7 Q. Is that 6:00 a.m. or 6:00 p.m. Be specific.

8 A. In the afternoon.

9 Q. Between?

10 A. Between 10:00 and 12:00, I cannot really be precise about
11 it. There was a customer in the garage who owed a white
12 Mercedes. And during that time he showed up with another two
13 friends in a red van, a Ford. They left the red van and they
14 took the white Mercedes. Then they returned approximately 5:10
15 or 5:15 in the morning with a white car, plus a gold Honda.

16 Q. I'm sorry, where did the gold Honda come from, when did it
17 come in?

18 A. The Mercedes, the white Mercedes, came in first. I
19 normally would take a look to see who is coming in. Since I
20 saw it was a white Mercedes, I know it was a car that is in the
21 company. They stopped the car right before the -- by the
22 office. They got out. The two guys that were with him, plus a
23 girl. They got in the van. The red van. They left the two
24 cars, and then they left. During that time, I spoke with them
25 and they got into the red van and then they left.

E4t0mcc3

"Delacruz"

1 I parked the cars and quarter to six the red van
2 returned. It stopped right where you get into the garage, the
3 entrance. And during that time, when I noticed that the van
4 stopped, I drove the girl's car, because they asked me to. I
5 parked the car.

6 In the meantime, inside the van, the mini van, the two
7 that arrived with owner of the Mercedes, one was sitting behind
8 the wheel, the other one in the front seat, but next to him and
9 in the passenger's seat behind the drivers seat, was the girl
10 that got in the van with them at the beginning.

11 In the meantime, they had -- they were having an
12 argument. The one that was next to the driver with the girl
13 that was sitting right behind the driver. The girl got out
14 from the van crying. She got out crying. And she asked me for
15 the key that I was holding in my hands. And the guy that she
16 was arguing with, he got out, as well. And he said, telling me
17 not to give her the key because she was drunk. I was between
18 both of them, and I did not know what to do. He, the guy, he
19 told -- he threatened to hurt me. And I made the decision to
20 give the key to the girl. And he continued to argue a little
21 bit more. And then they left the garage.

22 The girl was there crying, still in the car. She made
23 a phone call. I do not recall if my co-worker lent her the
24 phone or if she had her phone. But she made a phone call to
25 her friends. Her friends, they arrive in a taxi. And once

E4t0mcc3

"Delacruz"

1 they get in there, they got into the car with her, that did not
2 move, and they started to argue.

3 I stepped away from the car to get my things, because
4 I had ended my shift. Once I was leaving the garage, I see
5 that they -- I notice they were arguing inside the car. And
6 they were hitting each other. They were hitting each other and
7 screaming during that time.

8 Then I left. And, after that, I don't know anything
9 else.

10 Q. When Mr. McCaffrey asked you not to give her the keys,
11 Cruz, can you look around this courtroom and see if you can see
12 the person who made -- who did not want you to give the keys
13 back to the girl because she was drunk?

14 A. Here. You could see, I could see a lot of people that they
15 may look like him.

16 Q. Okay, all right, you said that that, that person, he asked
17 you not to give her the keys, even though she wanted the keys?

18 A. Yes.

19 Q. Because she was drunk?

20 A. Yes.

21 Q. And was that accurate, was she drunk? Well, you said the
22 red van returned approximately 6:45; correct?

23 A. No.

24 Q. When did the red van return?

25 A. It returned before 5:45, around there.

E4t0mcc3

"Delacruz"

1 Q. Okay. Who got out of the red van.

2 A. The white guy, chubby.

3 Q. And then he had a conversation with you about the keys?

4 A. Yes.

5 Q. Now, at that time, was there any -- could you hear any
6 yelling or screaming inside the car?

7 A. Inside which car?

8 Q. Inside the -- inside the red van, when the red van
9 returned?

10 A. No.

11 Q. But then, later on, did you see hitting and yelling and
12 screaming, correct?

13 A. In which car?

14 Q. In the red van.

15 A. No.

16 Q. Now, did there come a time when you said the girl is in the
17 car, some of the girls are in the car, inside the car, a fight
18 broke out, there was an argument and a fight?

19 A. But inside the gold Honda.

20 Q. Oh, inside the gold Honda.

21 Now, do you remember who it was that was inside the
22 gold Honda; if you know.

23 A. The girls that arrived with the guys, plus another two
24 friends that arrived there.

25 Q. And they got in the Honda?

E4t0mcc3

"Delacruz"

1 A. Yes.

2 Q. And then yelling and hitting and punching broke out inside
3 the Honda; correct?

4 A. Yes.

5 Q. Okay. Well, were they inside the car?

6 A. Yes.

7 Q. Okay. Now, again, tell the jury exactly what happened and
8 what you saw with regard to these people inside the vehicle?

9 A. About which one?

10 Q. All right, Mr. Delacruz. Tell the jury in your own words
11 exactly what it was that you witnessed when they got back in
12 the Honda.

13 A. The two friends, her two friends arrived in the taxi after
14 she had placed the call. And the car was exactly the same
15 place where I parked it. They got inside the car to talk with
16 their friend. I got away from the car to pick up my things,
17 since my shift had ended. Once the time that I was leaving,
18 they were yelling and hitting each other.

19 Q. Well, were they yelling loud? Were you able to hear them
20 easily?

21 A. They were yelling. They were yelling, questioning each
22 other and --

23 Q. And at some point, did they begin hitting each other?

24 A. Yes. They were really hitting each other.

25 Q. They were really hitting each other."

E4t0mcc3

"Delacruz"

1 MR. GARBER: Okay. That's the end of the direct.

2 And now cross-examination, this would be Shanda
3 Strain, and still Pelagio Cruz.

4 (Mr. Garber and Mr. Cohen reading:

5 BY MS. STRAIN:

6 "Q. Good afternoon, Mr. Delacruz?

7 A. Good afternoon.

8 Q. We have never met before, right?

9 A. True.

10 Q. Right? That's right, we never met?

11 A. It's true.

12 Q. But you have spoken to detectives in connection with this
13 case; isn't that right?

14 A. No.

15 Q. No, you did not speak to detectives a year ago when this
16 incident happened?

17 A. No.

18 Q. Okay. Your boss, who is your boss at the garage?

19 A. They change a lot.

20 Q. The boss changes a lot, is that yes?

21 A. Yes.

22 Q. You actually don't work there anymore; isn't that right?

23 A. No. Correct.

24 Q. You do not work there?

25 A. No.

E4t0mcc3

"Delacruz"

1 Q. Right. And you don't recall on September 19th, 2005, two
2 detectives from the Special Victim Squad, one who spoke Spanish
3 with you, and another one coming to interview you?

4 A. They did, together, interview me.

5 Q. You don't recall telling the detectives, you don't recall
6 telling the detectives -- you told the defendants that the girl
7 was drunk, isn't that right?

8 A. They did not interview me.

9 Q. Your name is Pelagio Delacruz; is that correct?

10 A. Yes.

11 Q. And at that time, September 19th, 2005, you worked 6:00 to
12 6:00; isn't that right?

13 A. Correct.

14 Q. And that was at the parking garage in the vicinity of 218th
15 and 10th, correct?

16 A. Correct.

17 Q. But it's your testimony here, today, that you never spoke
18 to any police with regard to this case?

19 A. Correct.

20 Q. You know the owner of the white Mercedes, right. He has a
21 monthly -- he was a monthly customer?

22 A. Correct.

23 Q. You saw him on numerous occasions before this?

24 A. Correct.

25 Q. You knew who he was?

E4t0mcc3

"Delacruz"

1 A. Correct.

2 Q. And you guys were friendly?

3 A. We know each other.

4 Q. And every once in a while when you parked your cars, you do
5 a -- you do a favor for some of your customers; isn't that
6 right?

7 A. Correct.

8 Q. And Mr. -- well, the owner of that Mercedes is one of those
9 customers?

10 A. Correct.

11 Q. And in fact, sometimes Mr. Hangers, Steve Hangers, who is
12 the boss and the owner of that parking garage that you used to
13 work at, sometimes you would get reprimanded, right, for doing
14 favors?

15 A. It's true.

16 Q. And you would get reprimanded by the boss because you would
17 do things that you were not supposed to be doing?

18 A. Incorrect.

19 Q. Wait, let me just start again.

20 And you would get reprimanded by the boss because you
21 would do things that you were not supposed to be doing?

22 A. Incorrect.

23 Q. Well, you got reprimanded for doing favors; that's what you
24 said.

25 A. Depends on what you understand as a favor.

E4t0mcc3

"Delacruz"

1 Q. Right. But you would get reprimanded for that.

2 A. I would like you to be more specific.

3 Q. Well, your boss, Mr. Hangers, and your other boss, Maria,
4 reprimanded you because you didn't follow rules.

5 A. Which rules?

6 Q. Did you -- or did you get reprimanded during your time as a
7 parking lot attendant at that garage by your bosses?

8 A. Repeat the question.

9 Q. During the time in which you worked at that garage, were
10 you or were you not, in trouble or reprimanded by your bosses,
11 Steve Hangers and Maria, because you didn't follow the rules?

12 A. I will ask you again, which rules.

13 Q. I'm going to move on.

14 What have you been reprimanded for?

15 A. Generally, when you work in a place, sometimes you can make
16 some mistakes. You can get into an accident, lose a key.

17 Q. But what were you reprimanded for, not what you could have
18 been, what were you reprimanded for?

19 A. Because of those reasons that I had said.

20 Q. And weren't you reprimanded for taking money on the side
21 from some of the customers to do them favors?

22 A. Never.

23 Q. That night, you're sure it is a red van.

24 A. Yes.

25 Q. No doubt in your mind, it was the color red?

E4t0mcc3

"Delacruz"

1 A. Yes.

2 Q. Would you agree with me that red is very distinctively
3 different than white, right? When you spoke with the
4 detectives, you told them they took her in a white van, did you
5 not?

6 A. Miss, I told you that I did not speak with the detectives.

7 Q. Okay. You have met with Mr. Veneziano before, right?

8 A. Who is Veneziano?

9 Q. The defense attorney who was questioning you before me.

10 A. Here in court today.

11 Q. And you saw -- and you said you saw him one time before
12 today. Where was that?

13 A. That was a long time ago that I was here in court.

14 Q. That you saw Mr. Veneziano?

15 A. I did not know that was his name.

16 Q. Did you speak to him on that day?

17 A. No, Miss.

18 Q. And Mr. Marino, his partner, you have met with him before;
19 isn't that right?

20 A. Yes.

21 Q. And you have met with your investigator; right?

22 A. Who was that investigator?

23 Q. The investigator that works for Mr. Marino, you met with
24 him?

25 A. I got together with Mr. Marino. If he was there, I don't

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"Delacruz"

1 know.

2 Q. And you went over your testimony with Mr. Marino; isn't
3 that right?

4 A. I just told him what I saw.

5 Q. And you told him what you would testify about here in;
6 court; right?

7 A. I told him the same thing that I'm saying here.

8 Q. You know Alphonso Rodriguez?

9 A. He is my co-worker.

10 Q. Right. And he worked, when you used to work there, the
11 shift after you; right.

12 A. Correct.

13 Q. And he actually showed up later after the girl had been
14 dropped off, right, to work his shift?

15 A. Correct.

16 Q. And the cops actually came to the garage that night,
17 uniformed police; right?

18 A. No.

19 Q. The police never came?

20 A. While I was there, no.

21 Q. And you left sometime after 6:00 a.m. Isn't that right?

22 A. Correct.

23 Q. And it's your testimony that the police never responded
24 while you were there?

25 A. Correct.

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"Delacruz"

1 Q. But you and Mr. Rodriguez, you had a conversation about
2 this incident after you guys were working together, isn't that
3 right.

4 A. What kind of conversation?

5 Q. You and Mr. Rodriguez talked about the girl that got left
6 behind the garage by the defendant and those others guys?

7 A. The same day, no.

8 Q. No, later. Later after this incident.

9 A. Yes.

10 Q. And in fact, you told Mr. Rodriguez that the guys took her
11 in a white Mercedes; isn't that correct?

12 A. I could never say that.

13 Q. You could never say that, that you said that, or not?

14 A. No.

15 Q. Can you clarify what you mean by no? Did you, or did you
16 not, tell them; yes or no.

17 A. What?

18 Q. Did you tell him that she was taken in a white Mercedes?

19 A. No.

20 Q. You stated earlier that two guys bring her back to the
21 garage in the van, right?

22 A. Correct.

23 Q. So it's two guys and one girl?

24 A. Correct.

25 Q. And you actually stated earlier, on direct, that the guys

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"Delacruz"

1 she argued with, it was a guy arguing with her, and he is the
2 one who got out later. And you saw the guy in the front seat
3 arguing with her; isn't that right?

4 A. I never said that they were fighting.

5 Q. You used the word "arguing," did you not.

6 A. To argue is not to fight.

7 Q. I understand that. You saw the white chubby guy arguing
8 with her, though, right?

9 A. Correct.

10 Q. And you saw her get out of the car, crying, right?

11 A. Correct.

12 Q. And she was not crying when she got into the car, when they
13 left the first time, right?

14 A. Correct.

15 Q. And then you saw -- and then you said he actually
16 threatened you, right?

17 A. Correct.

18 Q. And the girl was still crying, right?

19 A. Yes, sitting in the car.

20 Q. But he didn't stick around, right?

21 A. No, they left.

22 Q. His friend didn't stick around?

23 A. Repeat the question?

24 Q. His friend didn't stick around?

25 A. Which friend?

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"Delacruz"

1 Q. That he, the defendants, the people that were this van, two
2 guys and one girl, she gets out and she is crying, right?

3 A. Uh-huh.

4 Q. And then the two guys, they don't -- they don't stick
5 around, the two guys leave?

6 A. Correct.

7 Q. And some of her friends arrive.

8 A. Friends, girlfriends, her girlfriends.

9 Q. Are you sure that there was two? Could there have been
10 more?

11 A. There were two.

12 Q. I'm going to show you a photograph that has previously been
13 admitted into evidence. I'll have you take a look at it.

14 Do you recognize those women?

15 A. No.

16 Q. You don't recognize any of those women in the photograph?

17 A. No.

18 Q. When she was inside the Honda, when you claim that she is
19 arguing and fighting with her friends, can you show me, show me
20 what they were doing?

21 A. They arrived. One sat in the front and the other one in
22 the back. When the taxi stopped, I was already leaving. And
23 they started -- and they started to say, why you leave me.

24 I was walking out. And I stopped by the door. And I
25 saw that they were kicking and hitting with their hands to each

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"Delacruz"

1 other.

2 Q. Where was the original girl, that you saw her crying, where
3 in the car was she?

4 A. Behind the driver's seat -- no, behind the wheel.

5 Q. She was behind the driver's seat?

6 A. Yes.

7 Q. Where did the other two girls -- where did the other girls
8 go before -- where were they in the car during this fight?"

9 MR. COHEN: Well, you missed a -- the judge asked a
10 question.

11 MS. ZGODNY: Line 15.

12 MR. GARBBER: Line 15, wait a minute.

13 "Q. Was she in the drivers seat or in the seat behind where
14 the driver would sit?

15 A. In the drivers seat, in the gold Honda.

16 Q. Where did the other girls go, where were they in the car
17 during this fight?

18 A. One in the front seat, and one in the back seat.

19 Q. And who was doing the hitting?

20 A. I don't know, all of them.

21 Q. Well, how were they hitting each other?

22 A. With their hands, with their feet. They were just fighting
23 inside."

24 Q. I told you that I was standing by the -- oh, okay --

25 MR. COHEN: No, no.

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"Delacruz"

1 MR. GARBER: I'm sorry.

2 "Q. You didn't see anyone biting each other, did you?"

3 MR. GARBER: I think it's line 8.

4 "A. I told you that I was standing by the door, if they bit
5 each other I don't know.

6 Q. I understand. Did you see anyone bite someone else inside
7 the car?

8 A. No.

9 Q. I have no further questions."

10 I think that's the end. Could we take a short break?

11 THE COURT: Well, we didn't get started until late.

12 Are we done with the testimony of the trial?

13 MR. GARBER: We're done with the testimony of
14 Delacruz. And there is some other testimony.

15 MR. COHEN: We have half hour more.

16 THE COURT: I would normally take a break at 11:30,
17 but we didn't start until 10:00.

18 MR. GARBER: I have to go to the rest room, that's why
19 I'm asking, I apologize.

20 THE COURT: All right.

21 All right, so I don't know whether we're going to
22 finish all of this. We have a new witness that we asked to be
23 here at 2:00, so.

24 All right, ladies and gentlemen, we'll take a short
25 break, just about five minutes or so, okay. Use the rest room,

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"Delacruz"

1 get a drink, don't discuss the case, of course.

2 See you in a bit. All rise.

3 (Jury excused)

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E4t0mcc3

"Delacruz"

1 (In open court)

2 THE COURT: Okay. Use the rest room and we'll pick up
3 in about five minutes.

4 MR. GARBER: Thank you.

5 (Recess)

6 THE COURT: All right. Two things.

7 First of all, Juror No. 4, Ms. Kimbrough passed a note
8 to Mr. Deluzio at the break saying: Your Honor, is it relevant
9 that I was a SARTS volunteer for two years, North Central
10 Hospital, Bronx, around the year 2006 to 2007. SARTS is a
11 sexual assault response team volunteer.

12 I'm inclined to bring her out, just say, look, there
13 has been some testimony about -- this is about a rape. There
14 has been some testimony about hospital witnesses. Do you think
15 this would affect your ability to be fair and impartial. I
16 expect it won't. But if it does, or if it prompts followup, we
17 can do that.

18 MS. ZGODNY: Okay.

19 MR. GARBER: Okay. I would also ask for similar
20 instruction to what I requested with the doctor, which is not
21 to use her own expertise, but to listen to what the evidence is
22 here.

23 THE COURT: Yeah, I mean I don't think -- doesn't
24 sound like lick she has any expertise, necessarily.

25 But the other point is I got a response to one of your

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"Delacruz"

1 subpoenas. So I'm going to hand you this. It was a subpoena
2 that you asked me to sign for you. And this is their response.
3 So you could take a look. If you want me to do anything --
4 right, that was your subpoena, or was that the defendant's
5 subpoena.

6 MS. ZGODNY: Is that ours?

7 MR. LARKIN: Thank you.

8 THE COURT: Yeah, okay. If you need any followup from
9 me, let me know, but I don't think I necessarily need to do
10 anything.

11 Okay, so let's deal with Ms. Kimbrough right before
12 the lunch break, as opposed to delaying this break longer. So
13 let's bring out the jury. How much more of this do we have?

14 MR. COHEN: Probably more than I said.

15 THE COURT: Is it going to take us through lunch?

16 MR. GARBER: I don't think so, maybe half hour, 40
17 minutes.

18 THE COURT: Let's bring in the jury, and we'll finish
19 this up.

20 And then Mr. McCaffrey is going to testify?

21 MR. GARBER: Yes.

22 THE COURT: Okay.

23 THE DEPUTY CLERK: All rise.
24
25

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"Delacruz"

1 (In open court)

2 (Jury present)

3 THE COURT: All right, have a seat.

4 So we're going to resume and I think conclude the
5 trial testimony. So, Mr. Garber, you are going to go forward.

6 MR. GARBER: Yes.

7 THE COURT: And you are -- who are you now?

8 MR. GARBER: I am Ronald Veneziano, doing a direct
9 examination of William McCaffrey at the criminal trial.

10 THE COURT: All right. So Mr. McCaffrey, who is the
11 plaintiff here, was the defendant in a criminal trial. And he
12 testified at the criminal trial. Mr. Cohen is now going to
13 read the testimony of Mr. McCaffrey.

14 All right, let's proceed.

15 (Mr. Garber and Mr. Cohen reading)

16 MR. GARBER: Page 517 line 16:

17 BY MR. VENEZIANO:

18 "Q. Mr. McCaffrey, how old are you?

19 A. Twenty-nine.

20 Q. And do you have a family?

21 A. Yes.

22 Q. Are you married?

23 A. Technically.

24 Q. Okay, do you have children?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. With the same woman?

2 A. Yeah.

3 Q. How many children do you have.

4 A. I have two, a 10 and an 8 year old.

5 Q. Okay. Now, I assume you work for a living?

6 A. Yes.

7 Q. Can you tell us, tell the jury, what you do, what kind of
8 work do you do?

9 A. I am an interior contractor. Put windows in, custom
10 framing, Sheetrock, custom painting, floors; anything interior.

11 Q. Anything interior?

12 A. Yeah; kitchens, bathrooms.

13 Q. Okay.

14 A. Minus the plumbing.

15 Q. Now, I want to take you, without further adieu to
16 September 18, 1995; okay?

17 A. Yeah.

18 Q. Okay. September 18, 2005, forgive me.

19 I assume you remember that date very well.

20 A. Yes.

21 Q. I assume it's seared into your memory?

22 A. Yes.

23 Q. Yes, okay.

24 On September 18, 2005, where did you begin your day?

25 A. Home. As I woke up, I got dressed. And the rest of my day

E4t0mcc3

"McCaffrey"

1 unfolded. About 10:00, 10:30, I got picked up by a couple of
2 friends of mine to go out.

3 Q. Okay. And what happened then?

4 A. We went, switched cars at a parking lot to pick up the car
5 that we were going to currently drive that night.

6 Q. Okay. When you get to the parking lot -- I want you to
7 face the jury, and tell them everything that you know of what
8 occurred that evening which occurrence brought you here now.

9 A. After we dropped off the car and we went in the Mercedes to
10 the X Bar. It is on Fordham Road, right off the Deegan. We
11 left there about 4:30, 4:45, heading towards the Dyckman area,
12 where it is an area of clubs over there.

13 Q. This is 4:45, in the afternoon?

14 A. No, it's in the morning.

15 Q. It's in the morning.

16 A. Yes, sir. And we get to Dyckman. We're proceeding towards
17 Broadway. When we get to the corner, there is a car that is
18 parked, a gold Honda. When we get to the corner, there is a
19 light. We stopped at the light. I opened the window and I'm
20 talking to the people. There was a girl, like Semipartially
21 had her door open, just about to get into the car. I started a
22 conversation with her.

23 Q. Who was driving the car?

24 A. If I'm, to my knowledge it is Peter, but I mean --

25 Q. Okay. What's Peter's last name?

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"McCaffrey"

1 A. I don't know. I just I just met him that night.

2 I'm in the passengers seat. I start talking to the
3 young lady, you know, how are you doing, what were you girls
4 doing. There was another girl in the back seat, leaned up
5 against the door. I, therefore, jump out the car.

6 Q. How did you get into the car, into the passenger's seat?

7 A. When we exited the Mercedes.

8 Q. Approximately what time of the morning was that?

9 A. 4:30, between -- the latest, 4:45, 4:30.

10 Q. Sometime between 4:30, 4:45, maybe 5:00 o'clock, you see
11 this woman in the car. Is that what happened?

12 A. Yeah, she was sitting at the --

13 Q. Now, take it from there.

14 A. I pull up. I start a conversation with her: What are you
15 girls doing tonight.

16 Q. You pull up in your car?

17 A. In the Mercedes.

18 Q. In the Mercedes, okay. I start a conversation with her,
19 regular talk: How are you girls doing, what did you guys do
20 tonight, would you like to go after-hours with us, that's what
21 we're going to do.

22 She said yes.

23 The car was full. I asked her, do you mind if one of
24 his friends ride with you, because there were four people in
25 our car.

E4t0mcc3

"McCaffrey"

1 She said no problem.

2 I get out the passenger's seat. I go around to the
3 passengers seat and in their car and get in. She gets in the
4 drivers seat.

5 When the Mercedes pulls off, she pulls behind them.
6 She makes the right on Broadway. Her headlights are off, and
7 she is swerving a little bit. I let her know, your headlights
8 are off. She immediately pulls over and says I can't drive.
9 At that point, at that moment, the girl in the back seat exits
10 the car. She says, I'm staying here.

11 When the girl in the back seat exits the car, she says
12 can you drive.

13 I said, no problem, I'll drive to the parking lot. I
14 get out the car. I get into the drivers seat. The Mercedes is
15 further up now. I pull out and I drive three traffic lights.
16 I drive to the parking lot. It is on the right hand side.

17 Q. Whose car were you driving?

18 A. The young lady's.

19 Q. Okay, continue.

20 A. All right. I pulled in the parking lot. I get out the
21 car. I got to retrieve something from the Mercedes, I left my
22 watch and my sweater there. I get out. I go get my watch, my
23 sweater. They parking the cars. The Mercedes gets parked, the
24 mini van gets pulled out, we all started --

25 Q. You are back in the garage now?

E4t0mcc3

"McCaffrey"

1 A. Yes.

2 Q. And they are bringing in the Mercedes?

3 A. Yes.

4 Q. Everybody leaves the Mercedes?

5 A. Yes.

6 Q. And goes to the mini van?

7 A. Yes.

8 Q. What color was the mini van?

9 A. It's my recollection, red.

10 Q. Okay.

11 A. Red and white.

12 Q. All right, continue.

13 A. Okay. We enter the mini van. Peter sits in the driver's
14 seat. Raymond is the passenger's seat. Carlos is in the back
15 seat with the young lady. And I'm in the third seat. There is
16 three seats, actually, in the mini van.

17 Q. Okay.

18 A. We pull out. I get on my Nextel to call someone who was
19 downtown in the club to see what they are doing. When we exit
20 the parking lot, we headed towards 204 Street. As we're
21 heading towards 204 Street, I'm speaking on the phone,
22 everybody is talking, the music is on. Some Spanish is being
23 spoken. So we passed --

24 Q. By the way, do you understand Spanish?

25 A. No.

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"McCaffrey"

1 Q. Can you speak Spanish?

2 A. No, sir.

3 Q. Are you Spanish?

4 A. No, I'm Irish.

5 Q. You're Irish?

6 A. Yes.

7 Q. And you come from the Bronx.

8 A. Yes, sir.

9 Q. Okay. All right, go on.

10 A. We passed 204 Street. The club was closed. We started

11 heading back towards 207 Street, still talking amongst

12 ourselves in the car. I'm on the -- on and off my Nextel.

13 They discuss with the -- I'm sure, to my knowledge, I thought

14 everybody knew where we were going. We started heading towards

15 207 Street. They had head over the bridge. We get right on

16 the highway. My assumption, we're bringing Raymond and Jay

17 home, because I live in the opposite direction.

18 Q. Okay.

19 A. We get on the highway. We cut across the bridge and get

20 off Pelham Parkway. Twenty minutes after, from the time we

21 left the parking lot, we pulling up in front of Raymond's

22 house.

23 Q. Okay.

24 A. As we are pulling up, Raymond is going to get out of the

25 car. He asked me if I want to stay, whatever. Carlos tells me

E4t0mcc3

"McCaffrey"

1 the girl has to go back to the parking lot, she didn't want to
2 go. I said no problem.

3 Raymond exits the car. We pull up further, maybe a
4 block away where Jay lives. He lives in the next building
5 almost. He exits the car. I sit in the passenger's seat and
6 Carlos drives. The girl sits in the back seat.

7 We leave Jay's house, turn around to go back towards
8 the highway. About five minutes into the car ride, the phone
9 rings. Again, she picks up the phone. She is speaking normal,
10 in Spanish --

11 Q. Now, on the phone -- I'm sorry, I apologize for
12 interrupting.

13 When the phone rings, are you on the way back down?

14 A. We are heading back towards the highway.

15 Q. Heading back towards?

16 A. Back towards the parking lot.

17 Q. With the intention of going there?

18 A. To the parking lot.

19 Q. To do what?

20 A. To drop her off.

21 Q. Okay. Now, continue.

22 A. After we're almost reached the highway, she gets a phone
23 call. She answers the phone. It starts off regular. She's
24 having a -- she's having a -- she's having a -- having a
25 conversation. Then she starts to scream. The only thing she

E4t0mcc3

"McCaffrey"

1 said in English was something: Screw the car, or F the car.

2 She hangs up the phone on them.

3 Q. Right.

4 A. She's getting upset. We get on the highway. Phone calls
5 continues. She gets another phone call. She's screaming and
6 yelling at the people on the phone, hangs up on them.

7 Q. You are not able to understand what she is saying, or --

8 A. No. She only say said a couple of words in English.

9 Q. By the way, at this point, was she drunk?

10 A. To my knowledge, yeah.

11 Q. Okay, continue.

12 A. We get on the highway. The phone calls continue. She's
13 screaming a little bit louder with each phone call. In between
14 one of the phone calls, she says, I need to go back to the car
15 can you hurry up? We said no problem. The phone hangs up,
16 calls again. She screams at the top of her lungs now. She's
17 started crying. She passes the phone to the driver. The
18 driver said something in Spanish. I tell the driver just to
19 tell them the address of the parking lot and that we would be
20 there in about 10 minutes. We pass the phone. After saying
21 something to her, the girl starts screaming and yelling again
22 and hangs up the phone. Now, she's crying. The phone
23 continues to ring. This is the whole way back, almost to the
24 parking lot. She's answering the phone, she's not answering
25 the phone. She's picking up the phone. She's creaming with

E4t0mcc3

"McCaffrey"

1 them on the phone. She's crying. She's back and forth.

2 May I show what she was doing?"

3 MR. GARBER: I'll be the Court.

4 "Yes.

5 A. She's talking on the phone and like just screaming, like
6 she's fighting with the phone.

7 We pull into the parking lot. When we pull in the
8 parking lot, she exits the car, I exit the car. I'm telling
9 her don't drive. Because she's drunk. She going to get, you
10 know, into an accident because the way her headlights was off
11 when she pulled off.

12 Q. How long had you been with her that evening when you
13 perceived her drinking?

14 A. Forty-five minutes.

15 Q. And in the 45 minutes, did she have anything to drink.

16 A. No.

17 Q. Well, did there come a time when you saw her drinking?

18 A. No, I'm not, I didn't see her drinking.

19 Q. Okay, continue.

20 A. We pull into the parking lot. I'm telling her not to drive
21 because she's drunk. She continues to get the car from the
22 gentleman in the parking lot. I go and tell the gentleman in
23 the parking lot, she cannot drive, she's drunk. We told her
24 friends that they are coming, just wait for her friends before
25 you give her the car.

E4t0mcc3

"McCaffrey"

1 He said, you know, that it's -- just let her take her
2 keys. He's holding the keys, like arguing with me, back. I'm
3 telling him it's his -- I cursed at him. I tell him it's his
4 fault if something happens to her and she's drinking. They
5 talk to her friends on the phone, and she's on the way to the
6 parking lot. He continues to yell, get out of here and he
7 steps in my face. We're having a heated argument. Carlos
8 grabs me and says, you know what, let's just leave. This
9 argument went on for about 10 minutes. He says, let's just
10 leave before this gets physical. I said, no problem. And I
11 exited. I left him in the minivan, and got dropped off at home
12 right after that.

13 Q. You went right back to your house?

14 A. Yes.

15 Q. And you went home?

16 A. Yeah.

17 Q. Okay. Now, I would like to take you to that part of the
18 trip where you were driving and the cell phone first started to
19 go off, okay. There is an allegation that you pulled out a
20 knife, with a black handle, at or about that point. At or
21 about that moment, are you familiar with that? Are you not?

22 A. Yes, I heard it.

23 Q. All right. Is there any truth to that, whatsoever?

24 A. I had no knife. Exactly what I said, is exactly what just
25 happened.

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"McCaffrey"

1 Q. Okay. Now, when you were first contacted by the police,
2 the police asked you to come into the precinct, did they not?

3 A. Yes.

4 Q. Now, did they ask you to come into the precinct to do what
5 they call surrender?

6 A. He -- he said on the phone it had something to do with
7 robbery of a cell phone, so.

8 Q. You went to the precinct in response to that detective's
9 call.

10 A. Yes.

11 Q. That he would like to see you; correct?

12 A. Yes.

13 Q. How much time elapsed between the time the defendant called
14 you, and the time you walked into the police precinct?

15 A. I left immediately from work.

16 Q. And hour half hour?

17 A. Half hour.

18 Q. Okay. And you got to the precinct?

19 A. Yes. I was with my wife.

20 Q. Okay. Now, what happened to you, if anything, inside the
21 precinct?

22 A. I don't understand.

23 Q. Well, did they put you in a holding pen, did they try to
24 talk to you, did they try to get a statement?

25 A. They took me to a room, started asking me questions. I

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"McCaffrey"

1 asked -- I answered the questions to the best that I could.

2 And then the officer started telling me that I was -- did

3 something different. And at that point I was -- I am arguing

4 with them about what I did that night, and what happened that

5 night, for real. I told the gentleman if he doesn't believe

6 me, that I could do anything to prove it to him. I would even

7 take a lie detector test. Unfortunately, I didn't.

8 Q. Again, there was nothing to the story about the knife?

9 A. No.

10 Q. You did not have a knife?

11 A. No.

12 Q. All right. Now, you say that you work -- that you work

13 interiors. You do interior decorating, or interior

14 contracting?

15 A. Renovation.

16 Q. Renovation?

17 A. Yes.

18 Q. Carpentry?

19 A. Yes.

20 Q. All of that. You do all of that. And could it be possible

21 that you might have had a knife or some other sharp object for

22 purposes of cutting wood and things like that?

23 A. I just left the club with metal detectors, no.

24 Q. No, okay. And it's not your policy to carry anything with

25 you that -- when you are not working, when you are off duty so

E4t0mcc3

"McCaffrey"

1 to speak?

2 A. Of course not.

3 Q. So now, give me, again, your movements from the time it is
4 alleged that you took the knife out -- even though you said you
5 didn't take it out. Tell me, from that point, what happened
6 next.

7 A. To what I understood, when this was going on, the alleged
8 moment was after I left the parking lot.

9 Q. Right.

10 A. After we left the parking lot, we headed towards the
11 after-hours. When the after-hours was closed, we headed
12 towards Raymond's house.

13 Q. Right.

14 A. There was never a knife taken out. We got -- we went
15 across 207th Street, got on the highway immediately. Couldn't
16 have been more than 15 minutes to get to where Raymond lives.

17 Q. Approximately what time is this now, roughly, do you arrive
18 at Raymond's house?

19 A. Yeah, maybe 5:20, 5:30, I'm not checking my watch at this
20 time.

21 Q. All right, I understand. And from there, you go home?

22 A. After we went back to the parking lot, dropped the girl
23 off, I got into the argument with the gentleman. I left
24 immediately, went right home. Sometime maybe after six, early.

25 Q. And that was it?

E4t0mcc3

"McCaffrey"

1 A. Yes.

2 Q. Okay. Now, so that we're clear, did you ever stalk or
3 attack or rape anyone?

4 A. Never.

5 Q. I'm not just asking about this case.

6 A. Never.

7 Q. Ever do anything like that, in your entire life?

8 A. No.

9 Q. And was that the absolute truth before this jury?

10 A. Absolutely.

11 MR. VENEZIANO: I have no further questions."

12 MR. GARBER: That's the direct. Cross picks up on
13 541.

14 MR. COHEN: I have it.

15 MR. GARBER: Line 17. And this would be cross. I'm
16 Shanda Strain now, the prosecutor, cross-examining William
17 McCaffrey.

18 (Mr. Garber and Mr. Cohen reading)

19 BY MS. STRAIN:

20 "Q. Good afternoon, Mr. McCaffrey.

21 A. Good afternoon.

22 Q. Okay. On September 18, 2005, after September 17, going
23 into September 18, you were at X Bar with Raymond, right?

24 A. Yes.

25 Q. Who else was with you.

E4t0mcc3

"McCaffrey"

1 A. Jay and Carlos.

2 Q. And that was the first time you -- and was that, and that
3 was the first time you met Jay and Carlos.

4 A. Yes, I met Carlos one time earlier, maybe.

5 Q. And that that's Kuba?

6 A. Kuba.

7 Q. Kupa?

8 A. Yeah.

9 Q. It's now Kupa?

10 A. That's what it was. It's always been Kupa.

11 Q. Carlos Kupa Vargas; is that his name?

12 A. Carlos Vargas.

13 Q. And you were at X Bar. You arrived there about 10:00 p.m.
14 Right?

15 A. Yes.

16 Q. You, yourself, were drinking alcohol; right?

17 A. Two or three drinks. I drank two earlier, one towards the
18 end. It didn't agree with me.

19 Q. You had two or three drinks that night?

20 A. Yes.

21 Q. From 10:00 a.m. to 4:00 p.m. you had three drinks?

22 A. Yes.

23 Q. You remember that night, right?

24 A. Yes.

25 Q. You were able to recall things that happened that night,

E4t0mcc3

"McCaffrey"

1 right?

2 A. Yes.

3 Q. Even though you were out drinking that night, right?

4 A. Yes.

5 Q. And you are able to remember people that you met; right?

6 A. Yes.

7 Q. People that you saw; right?

8 A. Yes.

9 Q. Things that you did --

10 A. Yes.

11 Q. -- right?

12 And you remember the female that you met at 4:30 in
13 the morning, right?

14 A. Yes.

15 Q. Even though you had been drinking that night; right?

16 A. Yes.

17 Q. You remember her? You remember her?

18 A. Yes.

19 Q. You remember her face?

20 A. Yes.

21 Q. When you got to X Bar how did you get there?

22 A. We drove.

23 Q. Whose car?

24 A. We took the Mercedes Benz.

25 Q. Who was "we" who went to the club together?

E4t0mcc3

"McCaffrey"

1 A. I just answered, it was Carlos --

2 Q. Uh-huh.

3 A. -- Jay, Raymond, and myself.

4 Q. How did you get to the Mercedes Benz?

5 A. In a minivan.

6 Q. Okay. How did you get into a minivan?

7 A. He came and picked me up.

8 Q. Who picked you up?

9 A. Raymond and Carlos.

10 Q. And Raymond and Carlos picked you up in a mini van?

11 A. Yes.

12 Q. In the Bronx?

13 A. Yes.

14 Q. They drove you back to Manhattan?

15 A. Yes. We switched the car from the Mercedes.

16 Q. And you switched the cars?

17 A. Yes.

18 Q. And you got into the Mercedes?

19 A. Yes.

20 Q. And the three of you went to X Bar?

21 A. Yes.

22 Q. You were out having fun, right, at X Bar?

23 A. Yes.

24 Q. It's a popular place?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. It's crowded?

2 A. Yes.

3 Q. Lots of people?

4 A. Yes.

5 Q. Dance floor?

6 A. Yes.

7 Q. Your wife was not with you that night, was she?

8 A. No.

9 Q. No one had a girlfriend with them that night?

10 A. No.

11 Q. You were there drinking, yes?

12 A. I had a couple of drinks.

13 Q. Having fun.

14 A. Yes.

15 Q. Meeting women?

16 A. No.

17 Q. You didn't flirt with any women that night?

18 A. I flirted. I mean I didn't meet anybody.

19 Q. So you were flirting with woman?

20 A. You talk to another female.

21 Q. Talking to females, right?

22 A. Yes.

23 Q. But you didn't get anyone's numbers that night?

24 A. No.

25 Q. You didn't score at the club that night?

E4t0mcc3

"McCaffrey"

1 A. No.

2 Q. And you had this plan all along to go to an after-hours,
3 isn't that right?

4 A. I'm not too sure if it came up on the way after X Bar,
5 or -- it wasn't something that was planned. More spontaneous.
6 It just came about that's where we were going to go to the
7 after-hours.

8 Q. It was not planned or spontaneous that you were going to
9 the after-hours?

10 A. Yeah, it just came about that's where we were going.

11 Q. Okay. So there was no discussion about it?

12 A. We talked about it, yeah, do you want to go to the
13 after-hours.

14 Q. At what point?

15 A. When we exited.

16 Q. At what point did the discussion of the after-hours take
17 place?

18 A. After X Bar.

19 Q. After X Bar. Not while you were at X Bar?

20 A. It could have been during X Bar, it could have been after X
21 Bar when we talked about it.

22 Q. So you leave X Bar with your guy friends, right?

23 A. Yes.

24 Q. No women?

25 A. No.

E4t0mcc3

"McCaffrey"

1 Q. And you decide you want to go to after hours; isn't that
2 right?

3 A. Yes.

4 Q. And you decide that it would be better to go to after-hours
5 party with a female, right?

6 A. Yeah. Sometimes they are more amenable to let you in with
7 females when it is not just a bunch of guys.

8 Q. You decided to go looking for females at that point in
9 time, isn't that correct?

10 A. Not specifically.

11 Q. You did not tell the grand jury -- do you remember
12 testifying before the grand jury?

13 A. Yes.

14 Q. Do you remember swearing to tell the truth.

15 A. Yes.

16 Q. You don't remember telling the grand jury that you were
17 looking for women to take to the after-hours, because it is
18 better to arrive with females?

19 A. What was the question before I answered that.

20 Q. I am asking you, did you, or did you not, remember making
21 that statement?

22 A. Okay.

23 Q. And here it is:

24 "Q. Question, you didn't know them prior to this night?

25 "A. No. No, ma'am.

E4t0mcc3

"McCaffrey"

1 "Q. Question, never talked to them?

2 "A. No.

3 "Q. You thought you would invite them to a party with you?

4 "A. Sounds better with females with you."

5 Do you remember being asked those questions?

6 A. Yes.

7 Q. Do you remember being asked those questions and giving
8 those answers --

9 A. Yes.

10 Q. -- those responses, okay.

11 So at the end of the evening when you leaf X Bar is it
12 fair to say it's -- is it not, that you wanted to meet a lady
13 to take to after-hours?

14 A. No. It came about when --

15 Q. Can you answer my question?

16 A. No.

17 Q. So it was not that you were looking for a female to take to
18 this party?

19 A. In the question that you asked me, the way it was
20 pertaining is that why did I speak to this person.

21 Q. That's not actually the question I asked you.

22 Mr. McCaffrey. My question to you, Mr. McCaffrey, is when you
23 were -- after, after X Bar, you were driving around, you decide
24 you want to find a female; is that or is that not true?

25 A. No.

E4t0mcc3

"McCaffrey"

1 Q. You didn't want to take a female with you to after-hours?

2 A. No.

3 Q. Okay. But you do admit that you gave that testimony to the
4 grand jury?

5 A. When we spoke to the female --

6 Q. Yes or no, Mr. McCaffrey, did you give those answers to the
7 grand jury?

8 A. Yes.

9 Q. So at 4:30 in the morning, you are driving down Dyckman and
10 Broadway, right?

11 A. Yes.

12 Q. And you see a young woman?

13 A. Yes.

14 Q. She in the drivers seat of a car; right?

15 A. Yes.

16 Q. She's not standing outside in the street smoking, right?

17 A. Yes.

18 Q. Yes or no.

19 A. No.

20 Q. She's not standing out in the street smoking, is she, yes
21 or no?

22 A. I can't -- no.

23 Q. And in fact, you told the grand jury, right, that she was
24 sitting in the drivers seat of the car; isn't that right?

25 A. She got into the drivers seat of the car.

E4t0mcc3

"McCaffrey"

1 Q. Did you tell the grand jury that when you saw those
2 females, one was sitting behind the driver's wheel?

3 A. That was what I went meant, she was getting into the
4 drivers seat.

5 Q. So, now, that's what you meant, right, now, today?

6 A. That's what happened.

7 Q. Okay. Do you remember giving the grand jury -- do you
8 remember giving the following statement to members of the grand
9 jury: You were driving up Dyckman, you were driving up Dyckman
10 going toward Broadway. We seen two girls in the car. One was
11 sitting in the back, and one was in front.

12 Do you remember making that statement to the grand
13 jury?

14 A. Yes.

15 Q. You never told the grand jury that anyone was standing
16 outside the car, did you?

17 A. She was getting into the passenger's seat.

18 Q. You sat there through everyone's testimony, is that
19 correct?

20 A. Yes.

21 Q. You heard all of the witnesses who testified?

22 A. Yes.

23 Q. Including your friends, right?

24 A. Yes.

25 Q. And you have spoken to your friends in between the time in

E4t0mcc3

"McCaffrey"

1 which you were arrested today, isn't that right?

2 A. Yes.

3 Q. You met with Mr. Uribe?

4 A. I spoke to him.

5 Q. You met with him in person, did you not?

6 A. A long time ago, couple of months ago, six months ago,
7 probably.

8 Q. Six months ago. Are you sure about that?

9 A. I'm not sure of the exact day, but it wasn't yesterday.

10 Q. We'll come back to that.

11 So you're driving on Dyckman with Raymond. And who's
12 driving?

13 A. I remember Jay driving.

14 Q. Xxx you remember Jay drives?

15 A. No.

16 Q. Not Carlos?

17 A. No.

18 Q. So Peter Adorno was driving the Mercedes?

19 A. I don't know them that well. Maybe that's why, that I
20 didn't get them confused. It's just that I don't know them
21 that well. I knew where Raymond was sitting.

22 Q. Where was Raymond sitting?

23 A. In the back.

24 Q. And where were you seated?

25 A. In the passenger's seat.

E4t0mcc3

"McCaffrey"

1 Q. And you see these girls sitting in the car?

2 A. Yes.

3 Q. And you can tell they are drunk, right?

4 A. Not of just looking at them.

5 Q. Well, they are slouched up, right?

6 A. One was leaned up against the door in the back, the other
7 one was getting into the drivers seat.

8 Q. So she was able to walk, and one getting in the driver's
9 seat?

10 A. She was getting in the driver's seat.

11 Q. Do you remember telling Detective Arbuiso and the grand
12 jury that she was drunk?

13 A. Yes.

14 Q. And it was -- and what was it that made you think she was
15 drunk?

16 A. It was after the fact that, after I spoke to her.

17 Q. You knew she was drunk, right?

18 A. Yes, she had been drinking.

19 Q. But she was able to walk on her own, right?

20 A. From what I seen her walk, yes.

21 Q. And she was able to talk to you guys?

22 A. Yes.

23 Q. And have conversations with you guys?

24 A. Yes."

25 THE COURT: Mr. Garber, can you keep your voice up.

E4t0mcc3

"McCaffrey"

1 You're trailing off at the end, and I'm having trouble hearing
2 you. And I'm not sure if the jury is.

3 MR. GARBER: Sorry, okay. I'll start back at the top
4 of page 558.

5 "Q. But she was able to walk on her own, right?

6 A. From what I seen her walk, yes.

7 Q. Yes. And she was able the talk to you guys?

8 A. Yes.

9 Q. And have conversations with you guys?

10 A. Yes.

11 Q. And she was not hysterical at that point in time?

12 A. No.

13 Q. She was not crying?

14 A. No.

15 Q. She didn't have any injuries to her?

16 A. No.

17 Q. Her clothes were intact?

18 A. Yes.

19 Q. Her hair was not a mess?

20 A. Yes.

21 Q. Right?

22 A. Yes.

23 Q. Who was having the after-hours party?

24 A. It is a place where it has after-hours.

25 Q. And where is it?

E4t0mcc3

"McCaffrey"

1 A. On 204th.

2 Q. Okay. What do you -- what do you call that area of
3 Manhattan?

4 A. Dyckman, Inwood.

5 Q. Okay. That's now downtown?

6 A. No.

7 Q. That's not downtown Bronx?

8 A. No.

9 Q. That's not the South Bronx?

10 A. No.

11 Q. Not downtown Manhattan.

12 A. No.

13 Q. You would never refer to it like that, right?

14 A. No.

15 Q. Okay. And on route to this after-hours, you see the two
16 girls, right?

17 A. Yes.

18 Q. Before you jump out of the car, what do you say about the
19 two girls. You see them, what happens, tell us what happens.

20 A. Start a conversation with them.

21 Q. No. No, in the car with your friends, what do you say?

22 The car is driving. Did you say anything to your friends at
23 that point.

24 A. I opened the window and started talking to the girl.

25 Q. I opened the window and started talking to them?

E4t0mcc3

"McCaffrey"

1 A. Yes.

2 Q. And you didn't get out of the car?

3 A. After I started talking, to get out of the car.

4 Q. Which girl were you talking to the most?

5 A. The girl that was in the front.

6 Q. And the girl in the back, were you talking to her, too,
7 about the after-hours?

8 A. No.

9 Q. But she agreed to go with you to the after-hours,
10 initially.

11 A. No.

12 Q. She road for two blocks and then jumped out?

13 A. She road right around the corner.

14 Q. And then jumped out?

15 A. She exited. She got out the car.

16 Q. But she never agreed to go with you?

17 A. As I'm speaking to the girl, I'm assuming she is listening.

18 Q. Okay. But she, the girl in the back seat, never agreed to
19 go with you, did she?

20 A. No.

21 Q. Just like the original girl did not agree to go with you?

22 A. She agreed, the original girl.

23 Q. Did you communicate with your boys that you might have
24 found some girls to take to the party with you, now you have
25 your females?

E4t0mcc3

"McCaffrey"

1 A. No.

2 Q. Those females you were looking for to take to the party?

3 A. We were not looking for females.

4 Q. Even though it is easier to go to a party with females, did
5 you tell them, your guys, your friends, that you had found
6 them?

7 A. No.

8 Q. Okay. Well, you get out of the car, right. You get out of
9 the Mercedes?

10 A. Yes.

11 Q. Your friend's --

12 A. It's not my Mercedes.

13 Q. Your friend's Mercedes?

14 A. Yes.

15 Q. You go talk to these girls?

16 A. Yes.

17 Q. Your friends are not honking at you, right, they are not
18 honking at you?

19 A. No.

20 Q. They are not saying, hey, Wil, come on, let's go, what are
21 you doing, do they?

22 A. No.

23 Q. They don't say leave these girls alone, we have a party to
24 go to, do they?

25 A. No.

E4t0mcc3

"McCaffrey"

1 Q. They, in fact, drive, am I right?

2 A. Yes.

3 Q. You have no conversation with your friends once you see
4 that car with the girls?

5 A. I don't remember. I mean, what conversation. Meaning?

6 Q. No one told you that you had to go to the party, right,
7 your friends?

8 A. Not that I remember.

9 Q. They didn't rush you along?

10 A. No.

11 Q. They didn't say, let's go, you have a wife, we can meet
12 girls later?

13 A. No.

14 Q. In fact, they didn't do any of those things, because you
15 had discussed your plan before you got out of the car, isn't
16 that correct?

17 A. No.

18 Q. And your plan was to find a drunk girl that you could dupe
19 into coming with you, isn't that true?

20 A. No.

21 Q. Your plan was to find someone who might not be able to fend
22 you off, isn't that correct?

23 A. No.

24 Q. They knew what you were doing. That's why they didn't
25 honk. And at that point where you see the girl, you noticed

E4t0mcc3

"McCaffrey"

1 she is pretty, right?

2 A. Yes.

3 Q. She is an attractive girl?

4 A. Yes.

5 Q. So you get into the car, right, her car?

6 A. Yes.

7 Q. And you have a conversation about riding with her to the
8 after-hours, because there is not room in your car?

9 A. I introduced myself first.

10 Q. Right. But the reason you got in, as you have just told
11 us, was because there was not room in your car, right?

12 A. Yeah. And I assumed she was going to follow the Mercedes.

13 Q. And that was your friends's understanding, too, as far as
14 you knew?

15 A. I didn't even think we had think, at any time, discussed
16 it.

17 Q. You thought all of you would -- would take the two cars and
18 head to the after-hours, right. That's why you asked if you
19 could ride along with her, right?

20 A. Yes.

21 Q. Okay. Did you tell her where the after-hours was?

22 A. No.

23 Q. Did you tell her how far away it was?

24 A. She didn't ask.

25 Q. And you didn't tell her who was going?

E4t0mcc3

"McCaffrey"

1 A. The people that is in the car.

2 Q. You told her that?

3 A. I mean it's -- you could assume.

4 Q. But did you tell her that?

5 A. No.

6 Q. Did you tell her when she would get back?

7 A. No.

8 Q. Did you tell her how long you would be at the after-hours
9 party?

10 A. No.

11 Q. Did you tell her that her friends were invited?

12 A. Her friend is in the car.

13 Q. Do you know that she had friends inside a restaurant?

14 A. No.

15 Q. And this is approximately, what time, 4:45 in the morning?

16 A. Yes.

17 Q. So --

18 A. Little bit later, maybe a little bit later.

19 Q. Sometime between 4:45, 5:00 in the morning?

20 A. Yeah. I'm not checking my watch.

21 Q. You know, it is around this time of day.

22 A. Yes.

23 Q. Because that's when the clubs are closing, and you're going
24 to after-hours, right?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. Okay. And you mentioned that you have a cell phone that
2 you were using that night; right?

3 A. Right.

4 Q. And on -- and one of the reasons that you were using that
5 cell phone was to find out where the after-hours was, is that
6 not true?

7 A. I was talking to somebody that was already in the different
8 club.

9 Q. Now is it a different club?

10 A. He was in a different after-hours.

11 Q. A different. Where was the after-hours?

12 A. Where was that after-hours?

13 Q. Where was that after-hours?

14 A. Downtown, midtown; somewhere in Manhattan.

15 Q. Downtown. You were talking on your cell phone to that
16 person?

17 A. Yes.

18 Q. And you actually communicate?

19 A. It was later in the car.

20 Q. Right. But it's approximately --

21 A. This was not when I was in the vehicle with the young lady,
22 no. This is later on, after we're in the minivan.

23 Q. Is the woman with you, initially in the car, in the
24 minivan?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. And your friends are still with you?

2 A. Yes.

3 Q. And you're talking on your cell phone, isn't that right?

4 A. Yes.

5 Q. And how much time had passed between you picking up at
6 approximately -- picking her up at approximately 4:45 a.m. And
7 you making this phone call about the after-hours?

8 A. I was on my Nextel, however long it took to switch cars and
9 pull out.

10 Q. That was your own phone, right?

11 A. Yes.

12 Q. The cell phone you had at the time of this incident, and
13 the time of arrest?

14 A. Well, I have two Nextels.

15 Q. So you have two.

16 A. One, that one is for work, and one for home.

17 Q. You had one phone that night, right.

18 A. Yes.

19 Q. And you made phone calls throughout that night, 1:00 in the
20 morning, 2:00 in the morning; things like that?

21 A. Yes.

22 Q. Okay. And isn't it true that your last phone call that
23 night was at 3:00 in the morning?

24 A. I don't know. How am I supposed to know, unless I call or
25 key up.

E4t0mcc3

"McCaffrey"

1 Q. Isn't it true that you did not use your cell phone between
2 3:00 a.m. and 6:00 a.m. that night?

3 A. How am I supposed to --

4 Q. Is it or is it not?

5 A. It is the truth, I used the phone.

6 Q. Okay. Do you remember talking to Detective Arbuiso.
7 Right?

8 A. Yes.

9 Q. And you told him the truth about what happened?

10 A. Yes.

11 Q. You didn't tell him that her friends road with you for a
12 couple of blocks and jumped out?

13 A. Yes, I did.

14 Q. In fact, you didn't tell him anything about an after-hours.
15 You told him that you guys were going to take her for a ride,
16 isn't that true?

17 A. No.

18 Q. Do you know whose car that was that you were in, what --
19 that Honda?

20 A. No, I assumed it was hers.

21 Q. Okay. There was no conversation like: Oh, my God, you are
22 taking my car?"

23 MR. COHEN: There was no conversation of what is
24 happening to this person's car -- Whoops, sorry.

25 MR. GARBBER: That's okay? Let's just go back to

E4t0mcc3

"McCaffrey"

1 line 23, page 569.

2 "Q. There was no conversation like, oh, my God, you are taking
3 my car?

4 A. No.

5 Q. There was no conversation of what's happening to this
6 person's car?

7 A. No.

8 Q. The friend didn't express concern?

9 A. No.

10 Q. Her friend didn't express concern that her car was being
11 taken?

12 A. No. She left the car.

13 Q. She didn't protest, she just got out of the car?

14 A. She said she is staying there.

15 Q. She didn't protest anything, she just got out?

16 A. No.

17 Q. So you and the victim are going to this party with your --
18 the victim. She has difficulty driving, so the car is stopped.
19 And then you took over and you drive?

20 A. She climbs over, says I can't drive. The girl gets out the
21 car in the back.

22 Q. And you then get into the drivers seat?

23 A. Yes.

24 Q. Okay. And you drive to parking garage?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. And you're following the white Mercedes?

2 A. Yes.

3 Q. You are able to drive, right?

4 A. Yes.

5 Q. You are able to drive that night?

6 A. Huh?

7 Q. You were able to drive that night?

8 A. Yes.

9 Q. You were driving her car fine?

10 A. For three blocks.

11 Q. Right. But at that point in which you are driving her car
12 fine, you are not answering -- you're not swerving, right?

13 A. No.

14 Q. You are able to drive?

15 A. Yes.

16 Q. Okay. And the Mercedes is on its way, right?

17 A. Yes.

18 Q. And you go to the parking garage?

19 A. Yes.

20 Q. In between that time that you go, that you got out of the
21 Mercedes and the time in which you drove to the parking garage,
22 is the only conversation you had with Raymond the one about the
23 headlights?

24 A. Yeah, he keyed me up, and let me know when he was in the
25 car, other than that.

E4t0mcc3

"McCaffrey"

1 Q. It was just about the headlights. Was there a long
2 discussion about what you guys were doing, where you were
3 going?

4 A. No.

5 Q. Once you get out of Raymond's car, the only conversation
6 you had with your friends again until you meet up with them is
7 about the headlights, right?

8 A. I don't understand. Can you repeat the question?

9 Q. So you get out of the white Mercedes?

10 A. Yeah.

11 Q. Okay. And you get into the girl's car?

12 A. Yes.

13 Q. And then your friends call you, after you start driving,
14 and are saying her headlights are out, right?

15 A. It was on the speaker, the Nextel.

16 Q. Right. And you don't have any other conversations with
17 them at that point?

18 A. No.

19 Q. Right. You just drive to the parking garage?

20 A. Yes.

21 Q. Okay. How long were you planning on staying at the
22 after-hours?

23 A. Nothing certain.

24 Q. You didn't have to be at work the next day, right?

25 A. No. But if I come too late, my wife, I get in trouble.

E4t0mcc3

"McCaffrey"

1 Q. Okay. So the next day was a Sunday, right, because this
2 was a Saturday night?

3 A. Yes.

4 Q. You don't work on Sundays, right?

5 A. No. It's family day.

6 Q. And so you were out fairly late, but --

7 A. Yes.

8 Q. -- but you were not in a rush to get home, right?

9 A. Like I said, you can't stay out extremely late. I mean
10 when she goes out, she stays out the same amount of time.

11 Q. You're driving the girl's car, and it's just you and the
12 girl. Where is she sitting?

13 A. In the passenger's seat.

14 Q. How did she get into the passenger's seat?

15 A. She slid over. And when I get in the car into the drivers
16 seat.

17 Q. Okay. And what conversation are you having on the way to
18 the parking garage?

19 A. We didn't really have a conversation. It's two, three
20 traffic lights.

21 Q. You were sitting, in silence, in the car?

22 A. I don't recall exactly. Maybe general conversation.

23 Q. You didn't discuss the after-hours, or where it was?

24 A. No.

25 Q. You didn't discuss any of the timing or anything like that?

E4t0mcc3

"McCaffrey"

1 A. No.

2 Q. Didn't discuss how you would get back, right?

3 A. No.

4 Q. So you drive to the Bronx and decide to drop Raymond and
5 Jay off?

6 A. We drove to the parking lot.

7 Q. Okay, I'm sorry. You leave the parking lot. You all get
8 into the minivan, which you just testified on direct that you
9 believe it is red?

10 A. Red or white.

11 Q. Now it's red and white. Now, do you remember testifying in
12 the grand jury?

13 A. Yes.

14 Q. And you were -- and you were under oath then, right?

15 A. Yes.

16 Q. And that was much closer to time than you are today, right?

17 A. I mean I was still upset.

18 Q. You were still upset. Do you remember telling the members
19 of the grand jury that it was actually a white car?

20 A. Probably. But it was white and red.

21 Q. So, today, is it white and red, though, right?

22 A. To my knowledge.

23 Q. Okay. So you go, and the after-hours is closed, right.

24 You are all in this van. The after-hours is closed, not open.

25 Right? The after-hours is closed, it's not open.

E4t0mcc3

"McCaffrey"

1 A. Yes.

2 Q. The after-hours, when you arrive, was no longer open?

3 A. We passed by the after-hours. Yes, it was closed.

4 Q. Okay. And then it gets decided that you are going to take
5 Raymond and Jay home, right?

6 A. I don't know exactly where we're going until we go over the
7 bridge. Like I said, I assumed that is where we were going.
8 That it's more likely, yeah, we were bringing Raymond and Jay
9 home.

10 Q. And you don't tell the girl where you are going?

11 A. I'm not too sure if somebody in the car told her. She
12 didn't ask me directly. We were all talking amongst ourselves.
13 The radio was on and off, the Nextel.

14 Q. You didn't tell her that you were going to the Bronx,
15 though, right?

16 A. I'm not too sure.

17 Q. At any point in the night, did you tell her you were going
18 to the Bronx?

19 A. Somebody had to tell her.

20 Q. Did you?

21 A. No.

22 Q. At any point in the night, did you tell her you were going
23 to Raymond's house?

24 A. I'm not too sure.

25 Q. And it is at that time, then, that you are calling people

E4t0mcc3

"McCaffrey"

1 to go to another after-hours somewhere downtown?

2 A. I'm calling someone in another after-hours.

3 Q. Right. Which is downtown Manhattan.

4 A. Where they are at, that is where I was saying it was at.

5 Q. You assumed it was downtown Manhattan?

6 A. Yeah, because I was having a conversation with somebody.

7 Q. And you were driving on the Pelham Parkway to drop off
8 Raymond, right?

9 A. Yes.

10 Q. And that's in the Bronx?

11 A. Yes.

12 Q. And that's nowhere downtown. And that's -- that's nowhere
13 downtown Manhattan, Pelham Parkway, right?

14 A. Of course not. That was my personal conversation on the
15 phone.

16 Q. On the cell phone?

17 A. Everybody wasn't listening to downtown Manhattan.

18 Q. That's what you were doing?

19 A. I was talking to somebody that was downtown.

20 Q. And you were planning on going to the after-hours, to that
21 after-hours downtown?

22 A. No, I was speaking to somebody that was in an after-hours
23 downtown.

24 Q. And she was not coming on to anyone in the car?

25 A. No.

E4t0mcc3

"McCaffrey"

1 Q. She was not coming on to you?

2 A. No.

3 Q. And she was not coming on to any of your friends, that you
4 could see?

5 A. No.

6 Q. I mean she was talking --

7 A. I mean she was talking to people.

8 Q. And approximately how long into the ride, would you say it
9 was, before she became what you described as hysterical?

10 A. After we dropped off Raymond and Jay.

11 Q. And how long does it take, or did it take, for you to get
12 there to drop Raymond off, and Jay?

13 A. Twenty minutes, 15 minutes.

14 Q. Do you remember, page 64, line 6: Raymond and Jay.

15 A. Yeah.

16 Q. Where did you get out?

17 A. Where did they get out.

18 Q. Where did they get out?

19 A. Raymond, they live like a block away from each other. It's
20 not even literally a block. It is not a traffic light or
21 nothing. Raymond got off in front of his building. And I
22 learned later on that that was Jay's building. I was assuming
23 he is going to stay. Jay lives like next door to Raymond.

24 Q. Okay when you pulled up in Pelham Bay Parkway?

25 A. Yes.

E4t0mcc3

"McCaffrey"

1 Q. Who let out of the car first?

2 A. Raymond.

3 Q. Then what did Jay do?

4 A. We pulled up in a half block, next building he got out of
5 the car.

6 Q. Do you remember, page 78 of the grand jury minutes,
7 starting with line 15, giving the following answers to the
8 following questions:

9 "Q. How many minutes have you been in the car when you dropped
10 off Raymond?

11 "A. From the parking lot?

12 "Q. Yes.

13 "A. Fifteen or 20 minutes.

14 "Q. And then you dropped off somebody else?

15 "A. No, we just dropped off Jay and Raymond.

16 "Q. Dropped him off at the same place?

17 "A. Yes, ma'am."

18 Q. Do you remember being asked those questions, do you
19 remember being asked those questions and giving those answers?

20 A. Yes.

21 Q. You did not tell the grand jury --

22 A. They live next door.

23 Q. Okay. You are not listening to my question.

24 Mr. McCaffrey, did you tell the grand jury that you
25 drove further up the street to drop off Jay; yes or no?

E4t0mcc3

"McCaffrey"

1 A. Next door. No, it was not up the street.

2 Q. And, in fact, you told the grand jury that no one touched
3 her that night, is that correct?

4 A. Yes.

5 Q. No one touched her at all?

6 A. No one touched her.

7 Q. Whose minivan was this that you were in?

8 A. Carlos.

9 Q. But Jay was driving?

10 A. Yes.

11 Q. And then they got to the street. And then you stated to
12 the grand jury, if you recall: Everyone got out of the car.

13 Do you remember making that statement?

14 A. Got out of the car, yeah.

15 Q. We pull up to Raymond's house and everyone gets out of the
16 car. Do you remember that?

17 A. Everyone was staying there to get out of the car.

18 Q. And it's at that time that her phone starts ringing, right?

19 A. Right after they got dropped off.

20 Q. And she becomes hysterical, right?

21 A. About five minutes after you dropped them off.

22 Q. Starts crying?

23 A. She starts off normal, then she's getting into an argument
24 with whoever is on the phone.

25 Q. And you have no idea why, right?

E4t0mcc3

"McCaffrey"

1 A. She said --

2 Q. You have no idea why.

3 A. She said freak the car, F the car."

4 MR. GARBER: Okay. Instruction by the Court: "State
5 exactly what was said.

6 A. Oh, fuck the car.

7 Q. Did you tell the grand jury that, Mr. McCaffrey?

8 A. I told that they were arguing with on the phone, and that
9 she was screaming and yelling.

10 Q. Did you tell the grand jury that she made a statement, fuck
11 the car?

12 A. No.

13 Q. Okay.

14 A. I don't remember if I did or not.

15 Q. That's all I'm asking you. And you then drive --

16 A. I mean --

17 Q. And then you drive. And then you should drive her back?

18 A. We get on the highway and proceed to come back to the
19 parking lot.

20 (Continued on next page)

E4TUMCC4

"William McCaffrey"

1 Q. So the first phone call is approximately what, 5:30 in the
2 morning then?

3 A. I'm not checking my watch.

4 Q. OK. you --

5 But you say you pick her up at 4:45 to 5, right?

6 A. Yes, figure the time to get to --

7 Q. Drive, park the car?

8 A. Get on the -- get to Pelham Parkway.

9 Q. Now we're at 5:30, approximately?

10 A. Yeah.

11 Q. And is it a 10-minute ride back?

12 A. Approximately, I don't live there, so...

13 Q. You drop her off in the garage?

14 A. Yeah, when we got back. They would know better than I do.

15 Q. And you leave her there, right?

16 A. Well, not exactly just leave here there.

17 Q. You didn't stick around, right?

18 A. It was either stick around --

19 Q. Sir, please listen to my question.

20 What did you do when you got to the garage?

21 A. I exited the minivan. She got her car and I stood there
22 for a minute. I was speaking to -- I spoke to her, I spoke to
23 the parking attendant.

24 Q. And you didn't stay there, right, in the garage?

25 A. No.

E4TUMCC4

"William McCaffrey"

1 Q. You left?

2 A. I didn't want to get into a fight.

3 Q. You left?

4 A. Yes.

5 Q. You got back into the minivan with Carlos and he took you
6 home?

7 A. Yes.

8 Q. Is that right?

9 A. Yeah.

10 Q. You sure about that?

11 A. Yeah.

12 Q. You didn't say call Seimen's Cab Company at 6:06 a.m.?

13 A. No.

14 Q. You did not?

15 A. No.

16 Q. You had a cell phone with you that night, right?

17 A. Yes.

18 Q. You had a cell phone when you were arrested, right?

19 A. Yes.

20 Q. And that cell phone number is 347-321-1060, is that not
21 correct?

22 A. Yes.

23 Q. So you're telling this jury that you did not call a cab at
24 6:06 in the morning and request a cab to pick you up?

25 A. I got dropped off by car.

E4TUMCC4

"William McCaffrey"

1 No.

2 I don't recall making a call.

3 Q. You were here when Ramon Uribe testified, right?

4 A. Yes.

5 Q. You heard him say that she actually asked to be taken back
6 before he was dropped off, right?

7 A. Yeah, a couple of minutes right before we pull up in front
8 of his house.

9 Q. You heard her say that, right?

10 A. She told Carlos and Carlos told me.

11 Q. But you heard her saying she wanted to go back?

12 A. She needs to go back to her car.

13 Q. That was before any phone calls, right, according to you?

14 A. She made the phone call or she received a phone call -- I
15 think she made the phone call.

16 Q. You just testified that she got phone calls --

17 A. Yeah, she called someone.

18 Q. OK.

19 But at the time in which she asks for you to take her
20 back, Raymond is still in the car, right?

21 A. Yes.

22 Q. OK. And --

23 A. She doesn't ask --

24 Q. She is not hysterical at that point, right?

25 A. No.

E4TUMCC4

"William McCaffrey"

1 Q. She's not crying?

2 A. No.

3 Q. And she asks for you guys to take her back?

4 A. She said she has to go back to her car.

5 Q. And you guys don't take her back at that point in time?

6 A. We were a couple of blocks from where Raymond lives. We
7 dropped him off --

8 Q. You continued driving?

9 A. He was a couple of blocks away?

10 Q. So you continue driving, right? After she's asked to be
11 taken back?

12 A. She said she has to go back to her car.

13 Q. OK.

14 And you guys proceed to drive the few blocks, right?

15 A. Yes.

16 Q. And then she becomes hysterical?

17 A. No.

18 Q. After getting the phone calls?

19 A. Yeah, we dropped them off, and then we went to turn around
20 to get back on the highway, she received a phone call.

21 Q. Did you see if Raymond was on the phone at all that night?

22 A. I don't recall.

23 Q. So you and Carlos bring her back to the garage?

24 A. Yes, ma'am.

25 Q. On the way back she is not banging herself into the

E4TUMCC4

"William McCaffrey"

1 windows, right?

2 A. She's actually punching the car seat. I mean after a
3 couple of phone calls.

4 Q. She's punching the seat?

5 A. I mean punching the seat and screaming into the phone.

6 Q. She's punching the car but she's not pushing herself --

7 A. Of course not.

8 Q. She's not fighting with herself?

9 A. No.

10 Q. She's not breaking off her clothes, right?

11 A. No.

12 Q. You drop her off at 6 a.m. and leave, right?

13 A. I don't know the exact time but close to it.

14 Q. You had spoken to Ramon the next day, or Raymond? Sorry, I
15 keep calling him Ramon. You spoke to Raymond the next day?

16 A. Yes.

17 Q. And you guys spoke, you're friends?

18 A. Of course.

19 Q. And, o, you spoke before you were arrested, right?

20 A. Yeah.

21 Q. And, in fact, you knew that he was going in to speak with a
22 detective before you went, right?

23 A. He called me and said somebody had taken his car.

24 Q. And he told you he was going to speak with a detectives,
25 right?

E4TUMCC4

"William McCaffrey"

1 A. Yes.

2 Q. And you knew that before you went?

3 A. Yes.

4 Q. And you and Raymond spoke before he went and spoke to the
5 police?

6 A. He told me that he has to go to speak to a detective about
7 his car.

8 Q. How many times have you been in that parking garage before?

9 A. Never.

10 Q. You've never been in that parking garage other than that
11 night?

12 A. No.

13 Q. When she's crying hysterical and beating the seats, what
14 are you doing?

15 A. I'm sitting in the front seat listening.

16 Q. Trying to calm her down?

17 A. Trying to tell Carlos to hurry up go back to the parking
18 lot.

19 Q. Do you try talking to her?

20 A. She's on the phone on and off --

21 Q. You don't talk to her?

22 A. -- cursing in Spanish.

23 Q. You don't try to calm her down?

24 A. I told her to relax, we'll be there in 15 minutes the most.

25 Q. You said that the detectives told you that it was about a

E4TUMCC4

"William McCaffrey"

1 missing cell phone when he called you, right?

2 A. Yeah, robbery of a cell phone.

3 Q. And you came in and talked about that, right?

4 A. No problem.

5 Q. So he told you to come in because you knew that one of the
6 girls was missing a cell phone that night?

7 A. I cam in because a police officer called my phone and told
8 me to come to the precinct.

9 Q. And because the police officer wanted to ask you questions,
10 you wanted to tell them -- you wanted the police to believe
11 that you were being a hundred percent cooperative?

12 A. A police officer called my phone, I was worried, I went to
13 the precinct.

14 Q. You didn't ask: What phone, right?

15 A. He just said it was a over a robbery over a phone. He
16 said: How fast can you get down here. I said: I'll leave
17 work right now.

18 Q. You drop everything and leave work?

19 A. I was in the middle of work. Actually my wife just brought
20 me lunch.

21 Q. And you didn't ask: What phone, what are you talking
22 about?

23 You didn't say: I'll be there, I'll be done with work
24 in a couple of hours, I'll come down there then?

25 A. I asked him: How quick do you want me to come down. He

E4TUMCC4

"William McCaffrey"

1 said: Right now would be better.

2 Q. You didn't say: I don't know what you're talking about?

3 A. Not until I got down there.

4 Q. So it's your testimony that when you left Ms. Peguero that
5 night -- what was she wearing that night, do you remember?

6 A. Jeans and a halter top.

7 Q. Could you see her arms?

8 A. Yes.

9 Q. She wasn't wearing sleeves, right?

10 A. No.

11 Q. And you could see her neck and her shoulders?

12 A. Yes.

13 Q. I'm going to ask you to take a look at People's 19.

14 That is the girl that got into the car, right?

15 A. Yes.

16 Q. And it's your testimony here today that when you got out of
17 the van and left the garage, she didn't have any of those
18 injuries?

19 A. None.

20 I have no further questions."

21 MR. GARBER: We have one more and then I think that we
22 are pretty much done with the trial.

23 This is page 604 and it starts on line 16, do you have
24 that?

25 MR. COHEN: No, I don't -- just a moment, sorry.

E4TUMCC4

"David Diaz"

1 MR. GARBER: Good to go?

2 MR. COHEN: 604.

3 MR. GARBER: This is now the prosecutor's rebuttal
4 case at the trial and this is Shandra Strain, prosecutor,
5 questioning Detective Diaz and this is the direct examination.

6 (Mr. Garber and Mr. Cohen reading)

7 "Q Detective, do you speak Spanish?

8 A. Yes, I do.

9 Q. Are you fluent in Spanish?

10 A. Yes.

11 Q. Detective, I'd like to direct your attention to September
12 19 of 2005, the day following the incident in this case.

13 Were you working on that date?

14 A. Yes.

15 Q. Did there come a time when you and the lead detective in
16 this case, Detective Arbuiso, went to the parking garage in
17 question here in the vicinity of 216th Street and 10th Avenue?

18 A. Yes.

19 Q. And did you at that time interview anyone at the parking
20 garage?

21 A. Yes, I did.

22 Q. How many individuals did you interview?

23 A. Two.

24 Q. Who were those individuals?

25 A. Mr. Delacruz and Mr. Rodriguez.

E4TUMCC4

"David Diaz"

1 Q. What were their jobs there?

2 A. They were parking attendants.

3 Q. And do you know which one worked which shift?

4 A. Mr. Delacruz works the evening shift, from 6:00 p.m. to
5 6:00 a.m., and Mr. Rodriguez works from 6:00 a.m. to 6:00 p.m.

6 Q. And did you speak with him in English or Spanish?

7 A. In Spanish.

8 Q. Since your interview of Mr. Delacruz, have you seen him
9 since September 19, 2005?

10 A. Yes.

11 Q. When was that?

12 A. Yesterday.

13 Q. And where was that?

14 A. Here in court.

15 Q. And is that the same man that you interviewed one year ago?

16 A. Yes.

17 Q. Detective, what did happen when you went to the garage last
18 September 2005 and spoke with both of those attendants?

19 A. At first we walked in and it seemed like there was some
20 customers bringing in some vehicles, so we stood there until
21 everything cleared up because we wanted to speak with them
22 individually.

23 Mr. Delacruz recognized us by our attire as well
24 shield. As we approached them, he says: Are you guys here for
25 the girl that was crying the other day hysterically? And we

E4TUMCC4

"David Diaz"

1 nodded yes.

2 Q. And what did he tell you then?

3 A. He told us that on the day of the incident, there was a
4 girl there crying hysterically, no one was able to make any
5 sense our of her but she was seen with several individuals in a
6 white minivan.

7 Q. OK.

8 And he told you that the minivan was white?

9 A. Yes.

10 Q. Did he ever mention anything about a red vehicle?

11 A. No.

12 Q. Did you ask him what I had observed that day?

13 A. What he observed is the victim with these males. She was
14 there about 6:00 a.m. and her -- apparently her friends had
15 come around to the parking lot as well and they had left about
16 7:05 that morning.

17 Q. And did he ever tell you that at any time during your
18 interview with him that her friends beat her up that night in
19 the parking garage?

20 A. No.

21 Q. I have no further questions."

22 MR. GARBER: Now this is the cross-examination by Mr.
23 Veneziano, page 610.

24 (Mr. Garber and Mr. Cohen reading)

25 "Q Detective Diaz, when you spoke to those individuals -- and

E4TUMCC4

"David Diaz"

1 we're talking about Cruz and Rodriguez, correct?

2 A. Yes.

3 Q. When you spoke --

4 Who did you speak to first, Pelagio Delacruz or
5 Mr. Rodriguez?

6 A. Mr. Delacruz.

7 Q. Did now, you speak to them together?

8 A. No, separate.

9 Q. You purposely separated them?

10 A. Well, they were working. As they were parking vehicles, so
11 we started the conversation with Mr. Delacruz.

12 Q. OK?

13 A. Mr. Rodriguez was attending to other vehicles.

14 Q. OK.

15 Now, at that point, the investigation had just begun,
16 the case had just begun, correct?

17 A. Yes.

18 Q. And the case had begun the day before, right?

19 A. Yes.

20 Q. Who, if anyone, ordered you to go out and take the
21 statements of these two individuals?

22 A. That was the lead detective.

23 Q. Detective Arbuiso?

24 A. Yes.

25 Q. Ordered you to go out.

E4TUMCC4

"David Diaz"

1 Were you with him when he was ordered --

2 A. He wasn't ordered. We work on --

3 We were on the same team. So at the moment I was the
4 only Spanish-speaking person available.

5 Q. So you went out?

6 A. Yes.

7 Q. Now, in your conversations, besides taking the statement,
8 you had conversations with Pelagio Cruz, did you not? You
9 spoke to Mr. --

10 A. Mr. Delacruz?

11 Q. Correct?

12 A. Correct.

13 Q. Pelagio Delacruz.

14 A. Yes.

15 Q. OK.

16 And when you spoke to Mr. Delacruz, did you take
17 everything that you said with Mr. Delacruz and place it in this
18 report, this DD5?

19 A. No. I didn't make that report. That was Detective
20 Arbuiso's report.

21 Q. Oh, that was Detective Arbuiso's report?

22 A. Yes.

23 Q. Well, it's not your report, is that right?

24 A. That's correct.

25 Q. It's not your report?

E4TUMCC4

"David Diaz"

1 A. That is correct.

2 Q. Well, there is a signature on it. Can you take a look?
3 Can you tell us whose signature it is?

4 Now, look at the bottom where there is a space where
5 it says signature.

6 Whose signature is that, is that yours? Is that
7 Detective Arbuiso's?

8 A. Detective Arbuiso's.

9 Q. Detective Arbuiso's.

10 So it's his report?

11 A. Yes.

12 Q. It's not your report?

13 A. That is correct.

14 Q. He spoke Spanish too, correct, Detective Arbuiso?

15 A. He does not speak Spanish.

16 Q. He does not speak Spanish.

17 So he's speaking to Mr. Rodriguez and he's speaking to
18 Mr. Delacruz in English?

19 A. No.

20 Q. In Spanish? He doesn't speak Spanish.

21 Well, who was speaking to whom? Who was speaking to
22 whom that morning?

23 A. That morning, Mr. Delacruz was very forthcoming in advising
24 us that --

25 Q. Who was speaking to whom?

E4TUMCC4

"David Diaz"

1 A. I was speaking to Mr. Delacruz.

2 Q. You went out to speak to Mr. Delacruz and Detective Arbuiso
3 is with you?

4 A. Yes.

5 Q. OK. Now --

6 You come back to your office or to your headquarters,
7 and as a result of this visit, you generate what's called a
8 DD5, right, a report of what you did during that day with
9 regard to this case?

10 A. That's what the lead detective did, yes.

11 Q. Isn't that right?

12 That's what Detective Arbuiso did, correct?

13 A. Yes.

14 Q. Now, it was you, however, who spoke to Mr. Delacruz and who
15 spoke to Mr. Rodriguez, and it was you because you just told us
16 that, Detective.

17 Is that right?

18 You --

19 This visit that you made to that garage the very next
20 morning, the very next day generated this DD5, a report of what
21 you did on this case on that day, right?

22 A. I don't understand your question.

23 Q. Just define what a DD5 is for the jury.

24 A. A DD5 is a report that's of any investigation, any steps
25 that we take during the investigation, during the course of the

E4TUMCC4

"David Diaz"

1 investigation.

2 Q. Now, both of these gentlemen, Mr. Pelagio Cruz and Mr.
3 Rodriguez, both of them spoke Spanish?

4 A. Yes.

5 Q. Did either one of them, to your knowledge, speak English?

6 A. If they did speak English, I'm not aware of it.

7 Q. OK.

8 So if they spoke Spanish, then I assume that they were
9 speaking to you?

10 A. Yes.

11 Q. Because you understand and speak Spanish?

12 A. Yes.

13 Q. Detective Arbuiso, who was with you, does not understand
14 nor does he speak Spanish?

15 Do you know?

16 You don't know?

17 A. He does not speak Spanish.

18 Q. But, for some reason, even though you're the one who did
19 the interview, for some reason, your name does not appear on
20 the DD5 and Detective Arbuiso's name appears on the DD5."

21 MR. GARBBER: Page 618 at the bottom.

22 Q. If you know, why -- I will try to make it as simple and
23 straightforward as possible -- why did Detective Arbuiso sign
24 this document when you're the one that did the interviews?

25 A. Because --

E4TUMCC4

"David Diaz"

1 Q. Why?

2 A. Because I translated for Detective Arbuiso.

3 Q. But the bottom line on it is that for whatever reason, you
4 being the one who spoke to the two individuals, your name --
5 your signature is not on this document, correct?

6 A. Correct.

7 Q. And Detective Arbuiso's signature is, correct?

8 A. Correct.

9 Q. Is there anything here to indicate Detective Arbuiso --
10 well, or you -- is there anything to indicate your connection
11 with this document?

12 And you're Detective Diaz, correct?

13 A. Yes.

14 Q. Is your name, Detective Diaz, anywhere on this document?

15 A. Yes.

16 Q. Where is it?

17 Is that he went with you, in other words, on the
18 bottom of the report. He says that he went with you?

19 The Court: Well, is your name in the report?

20 The Witness: Yes, it is.:

21 MR. GARBER: I believe that's the end of the cross and
22 there is a redirect by Ms. Strain, top of page 622:

23 "Q Detective, who was with you when you went to the garage?

24 A. Detective Arbuiso.

25 Q. Who was the lead detective on this case?

E4TUMCC4

"David Diaz"

1 A. Detective Arbuiso.

2 Q. Was Detective Arbuiso speaking to these individuals or were
3 you?

4 A. I was speaking directly through Detective Arbuiso.

5 Q. And what were you doing as you were speaking?

6 A. I was translating the questions Detective Arbuiso was
7 asking me, then asking Mr. Delacruz as well as Mr. Rodriguez,
8 and then their response I translated back into English.

9 Q. Did you tell Detective Arbuiso everything that they told
10 you?

11 A. Yes.

12 Q. And is that what is contained in this DD5?

13 A. Yes.

14 Q. Did anyone ever tell you that those girl's friends were
15 beating her up, kicking her and punching her?

16 A. No. "

17 MR. GARBER: There will be no further questions on
18 recross.

19 "Q Did they ever tell you that she was hysterical?

20 A. Yes.

21 Q. When did they say that she was hysterical?

22 A. The moment Mr. Delacruz saw us, he referred to the victim.

23 Q. OK. Now, was there ever a time when -- withdrawn.

24 Did Mr. Delacruz say that he watched the whole
25 situation so that he could not possibly have missed a fight

E4TUMCC4

"David Diaz"

1 between the girls?

2 A. Mr. Delacruz never mentioned anything.

3 Q. Never mentioned that. Did --

4 Was there an attempt to interrogate Mr. Delacruz --

5 -- to fix the time that this fight in the car between
6 the girls was supposed to have occurred?

7 A. Mr. Delacruz never mentioned a fight.

8 Q. So basically what it comes down to is what he said that
9 when he -- at one of the points when he saw her she was not
10 hysterical, correct?

11 Mentions not hysterical?

12 At any time when you are talking to Mr. Delacruz --

13 -- did he say at 6:00 a.m. the girl was here
14 hysterical. She was with some guys and left in a white
15 minivan. I don't know them. They dropped her off here at 6:00
16 a.m. The police came but they didn't talk with them. I asked
17 about how the autos were logged into the lot and I was shown a
18 computer. Other than --

19 Other than the fact that when she was in the garage
20 she was hysterical, did he say anything more on that? Did he
21 elaborate on that?

22 A. Not that I can recall.

23 Q. Did he say whether she was so hysterical that she was
24 incapable of answering questions in the interview?

25 A. She was crying immensely. No one could make any sense of

E4TUMCC4

"David Diaz"

1 what she's saying.

2 Q. She was crying, is that what you said?

3 A. Yes.

4 Q. And nobody could make any sense of what she was saying, is
5 that what you also said?

6 A. Yes.

7 Q. So that's when she was hysterical, isn't that correct?

8 A. That is correct.

9 Q. Right.

10 And basically did you ask Mr. Delacruz specifically,
11 and straight to the point: Did you witness her get in a car
12 and become engaged in a fight?

13 A. No.

14 Q. So you never --

15 You never posed that question, correct?

16 A. No. He provided that information to us.

17 Q. He provided that information to you, the pronoun 'he'
18 referring to Mr. Delacruz?

19 A. Yes.

20 Q. He in your interview with him provided that information?

21 A. Provided that he saw the victim in the company of some
22 males in a white van.

23 Q. Well, he didn't just see the victim in the white van. You
24 also said that in the white van he saw them fighting, yes?

25 A. No.

E4TUMCC4

"David Diaz"

1 Q. No. What did he say?

2 A. All he mentioned was that he saw the victim in the company
3 of some males. He mentioned a white van. He mentioned that
4 there was police officers that responded, she wasn't able to
5 speak with them but at no time did she -- he ever mention there
6 was a fight.

7 Q. At no time did she ever mention that there was a fight?

8 A. He mentioned.

9 Q. In other words, when you say 'he,' who's he, Mr. Delacruz?

10 A. Mr. Delacruz.

11 Q. So, basically what you're --

12 You're saying she was -- she was hysterical but there
13 was never a statement from Mr. Cruz saying that he saw a fight,
14 is that right?

15 I want to be accurate about it. There was never a
16 statement from Mr. Cruz that he, Mr. Cruz, saw a fight?

17 A. There was no such statement because he never made that
18 statement."

19 MR. GARBER: OK. I believe that is the end of the
20 examination.

21 THE COURT: That's the end of the trial transcript.

22 MR. GARBER: There might be one other brief section.

23 (Pause)

24 MR. GARBER: Mr. Cohen, you are actually done.

25 MR. COHEN: I am finished.

E4TUMCC4

"David Diaz"

1 MR. GARBER: One moment, your Honor.

2 THE COURT: Can Mr. Cohen step down?

3 MR. GARBER: He is done.

4 THE COURT: Are you ready to call your first witness?

5 (Pause)

6 THE COURT: Mr. Garber, I don't want to have a long
7 delay here, so call your witness.

8 MR. GARBER: The defense calls -- the plaintiff calls
9 William McCaffrey.

10 WILLIAM MCCAFFREY,

11 called as a witness in his own behalf,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. GARBER:

15 THE COURT: You may proceed, Mr. Garber.

16 Q. How does it feel to sit here and rehear that trial
17 testimony?

18 A. It was horrible. It was like living a nightmare to hear
19 all of those things that I went through on the stand and hear
20 false testimony. It's surreal.

21 Q. There were lies that you were sitting here listening to
22 during the presentation yesterday and today?

23 MR. LARKIN: Objection.

24 THE COURT: Overruled.

25 Go ahead.

E4TUMCC4

McCaffrey - direct

1 Q. Tell this jury what it was like to sit through a criminal
2 trial accused of a horrific crime like rape that you did not
3 commit?

4 A. I tried to put it in words, imagine sitting here and you
5 know that you didn't do any of these things and trying to
6 convince people that you did or trying to tell the cops that
7 you didn't do this. And this is what really happened and
8 fighting and knowing it is just a horrible accusation and just
9 feeling like, how do I let these people know that I didn't do
10 this, that this absolutely didn't happen at all. It is a
11 nightmare. I can't even explain it in words. To sit there and
12 to feel like nobody is believing you, you are telling the
13 truth.

14 Q. What is your reaction to the word "rape"?

15 A. You cringe. I am raised by females. Anybody, when you
16 hear the word "rape," even if they are innocent, even sitting
17 here right now knowing that I'm innocent, everybody knowing I
18 am innocent and still hearing the word "rape," it's terrible.
19 It is terrible.

20 Q. How old are you?

21 A. Currently?

22 Q. Yes.

23 A. 37.

24 Q. This ordeal started in 2005?

25 A. Yes.

E4TUMCC4

McCaffrey - direct

1 Q. So almost nine years ago?

2 A. Yes.

3 Q. Where were you born?

4 A. In the Bronx, South Bronx, technical -- North Bronx I was
5 raised in the South Bronx.

6 Q. What hospital?

7 A. Misericordia Hospital. It is currently Our Lady of Mercy.

8 Q. You need keep your voice up a little bit. Can you get
9 closer to the microphone.

10 Are you nervous?

11 A. Of course.

12 Q. Describe the neighborhood that you grew up in.

13 A. It was a tough neighborhood, around Soundview, Bronx River.
14 I played you know, amongst the projects outside, you had to be
15 a tough kid to come from there.

16 Q. Did you have a reputation as being a tough kid?

17 A. Somewhat in the streets, you know, I was kind of hard
18 growing up at home. I am kind of a momma's boy. When I was
19 outside you had to be a tough kid in a tough neighborhood.

20 Q. You said you are a momma's boy. Were you raised by your
21 mother?

22 A. My grandmother, technically, but I call her mother because
23 she raised me.

24 Q. What is your grandmother's name?

25 A. Audrey Muncey.

E4TUMCC4

McCaffrey - direct

1 Q. Did you have a nickname?

2 A. Tank.

3 Q. Tank?

4 A. Yes.

5 Q. How did you get that?

6 A. My grandmother named it to me, I was a pudgy kid with
7 fat feet and it stuck with me.

8 Q. So you have some girth to you, right?

9 A. Yes.

10 Q. So people call you Tank sometimes?

11 A. Yes.

12 Q. Who did you grow up with?

13 A. My sister Sally, my aunt Rose, my uncle Freddie -- he was
14 in and out periodically -- and Sally's daughter and my niece,
15 Tiffany.

16 Q. Is that Sally right there?

17 A. Yeah.

18 Q. You said sister Sally, is she actually your sister?

19 A. It is actually kind of complicated because she was the
20 youngest of my grandmother children's, so since I was raised
21 under my grandmother as her own, I was raised with her my
22 mother.

23 Q. What was she really?

24 A. My aunt.

25 Q. What about your dad?

E4TUMCC4

McCaffrey - direct

1 A. I don't know my biological father. My father that I have
2 his last name raised me until I was 9. He had to leave the
3 home. He was actually my grandmother's boyfriend. He was
4 around before my sister was actually born. He raised my uncle,
5 stayed around raised me and my sister when I was 9 and moved
6 back to Long Island to take care of his grandmother -- his
7 mother was sick.

8 Q. Where is he now?

9 A. He passed away when I was 17.

10 Q. So he left the house when you were 9?

11 A. Yes.

12 Q. He was grandmother Audrey's -- who you call your mother's
13 boyfriend?

14 A. Yes.

15 Q. What was his name?

16 A. John McCaffrey.

17 Q. So McCaffrey is not your birth name?

18 A. I didn't have a name on my birth certificate until I was
19 17. I took his name.

20 Q. After he died?

21 A. Before he died, right, he was sick.

22 Q. So you took the name of your grandmother's boyfriend John
23 McCaffrey who you considered to be your father?

24 A. He was my father growing up. He was the only father I
25 know.

E4TUMCC4

McCaffrey - direct

1 Q. Did you live with him any period of time after you were 9.

2 A. I moved out when I was 16 -- between 16 and 17. He got
3 sick from complications from bypass surgery and passed away
4 when I was 17.

5 Q. You said that you were basically raised by women and that
6 you were a momma's boy. Can you elaborate on that?

7 A. I was raised by my grandmother and her sister -- I wasn't
8 one that had a big brother I had to go to my big sister with
9 everything. My aunt kind of figured, she was close in age
10 because my grandmother was working at the time --

11 Q. Slow down?

12 A. Social activities in the house, there was no male in the
13 home, so.

14 Q. What would you do?

15 A. Things they do.

16 Q. Like what?

17 A. Brush my sister's hair, growing up. Watch stories with my
18 grandmother, learned how to crochet.

19 Q. Stories?

20 A. Soap operas.

21 Q. What soap operas?

22 A. Guiding Light, One Life to Live, Young and Restless.

23 Q. But on the street you had a different persona?

24 A. It was a rough neighborhood.

25 Q. Now, when you were accused of a rape that you didn't

E4TUMCC4

McCaffrey - direct

1 commit, OK, how did that affect or -- did it have any effect on
2 your relationship with Sally and Rose and Audrey?

3 A. It is embarrassing, you know, I have to go to the female
4 that raised me and explain to them, I didn't rape somebody. I
5 didn't do this. And they know me, of course. But like I said
6 before, when you hear that word "rape" you immediately cringe.
7 It is not judgment -- it is a horrible thing to try to explain
8 to your family. I didn't do this. You know, and it is just it
9 is crazy like, imagine I am already incarcerated at the time.
10 It is in all of the newspapers. It is a public case. They got
11 to answer to their peer groups, to their friends. Between, you
12 know -- I just felt bad that you know I had to place that
13 embarrassment upon my family that I was even accused of this,
14 let alone that I have to fight, that I am innocent.

15 Q. OK. On the opening statement in this trial, Ms. Zgodny got
16 up there and said, well, you know, Ms. Peguero recanted and
17 said that she wasn't attacked and wasn't raped, but that was
18 it. Do you remember that?

19 A. Yes.

20 Q. How did that make you feel?

21 A. It made me feel terrible.

22 MR. LARKIN: Objection.

23 THE COURT: Overruled.

24 You can answer.

25 A. They were able to take away what little bit of peace of

E4TUMCC4

McCaffrey - direct

1 mind that I had, that she admitted that I didn't rape her, that
2 I didn't kiss her or I didn't touch her at all. I didn't even
3 do anything to her. And now they made it seem like 99 percent
4 of her story was true and the only part that wasn't was the
5 rape.

6 My grandmother was in the audience, my whole family is
7 there and they are making it seem like -- trial, like I was
8 actually innocent and factually I was innocent, I didn't touch
9 her. And now my family has got to sit there and listen because
10 they want to spin the story to this fact that, you know, you
11 know, everything is true and she has a perfect recollection of
12 everything but when it came to the rape, that wasn't true.

13 But it is not fair. It wasn't fair for me and my
14 family. Regardless of what the situation is to sit there and
15 have to fight all of that time for her to tell the truth. And
16 she honestly did tell the truth for them to spin that to
17 whatever way they want to -- I didn't touch this girl. I
18 didn't rape her. I didn't kiss her. I didn't contribute to
19 any of this. This was a complete lie. I told the truth every
20 time I was asked, whether it was on the stand, grand jury,
21 questions, newspapers -- whatever it was, I told the exact same
22 thing that I said from the day because it was the truth.

23 THE COURT: I think that we are getting a little far
24 afield from the question.

25 THE WITNESS: Sorry.

E4TUMCC4

McCaffrey - direct

1 THE COURT: That's all right.

2 Next question.

3 Q. You said that every time that you were called upon to
4 address this, you told the truth, right?

5 A. Yes.

6 Q. Well, there came a point where you came into, you met
7 Detective Arbuiso, right?

8 A. Yes.

9 Q. And you voluntarily went into the precinct, right?

10 A. Yes.

11 Q. And he questioned you about this case, right?

12 A. Yes -- well, he asked me what happened the night of the
13 18th, and I explained it.

14 Q. You told him you were innocent?

15 A. From the beginning, I mean, after I figured I was there
16 investigated for rape, I told, obviously, I didn't take any
17 cell phone or stole a cell phone after I did tell him the
18 events of the date and I was being accused of rape and I was,
19 how could you do this to her --

20 Q. Let's back up a second.

21 They contacted you or you were contacted by Detective
22 Arbuiso to go in to talk about a robbery of a cell phone,
23 right?

24 A. I was doing some work in a car. I was doing some general
25 work inside of the vehicle. My wife bring me some lunch. I

E4TUMCC4

McCaffrey - direct

1 got a phone call. I talked to the detective, he said that he
2 need to ask me some questions about a phone or a robbery of a
3 cell phone. I told him if I could come down at the end of the
4 day, he said it is important to come down now. I told him that
5 I would drop everything --

6 Q. Slow down. She has to take everything down.

7 THE COURT: Let's ask specific questions. We are
8 beyond the question that you asked.

9 Q. OK. You went into the precinct, right?

10 A. Yes.

11 Q. And you were told that it was about a robbery of a cell
12 phone initially, right?

13 A. Yes.

14 Q. That was not the truth, right?

15 A. Yeah, it wasn't the truth.

16 Q. So he lied to you to get you to come down, right?

17 A. Regardless, I didn't mind going to the precinct. I didn't
18 do nothing, but he lied to me. He didn't say anything about
19 rape on the phone.

20 Q. He didn't say anything about rape?

21 A. No.

22 Q. When you get there, there is a discussion about an alleged
23 rape?

24 A. After I explained the events of the night, the car and
25 everything that I testified to, he said that, you know, the

E4TUMCC4

McCaffrey - direct

1 girl got raped and she got hurt and bitten and how could you do
2 this.

3 Q. OK.

4 A. You are going to spend the rest of your life in jail.

5 Q. I want you to tell this jury exactly what Detective Arbuiso
6 said to you after you told him you didn't do it. And don't be
7 shy. Tell them what he said.

8 A. He said you are a piece of shit. How the fuck could you do
9 this? You are going to spend the rest of your fucking life in
10 jail. Who bit her? And after the rape, he left the room and
11 said, now you are going to sit in here and think about what you
12 did to this fucking girl.

13 Q. How did that make you feel?

14 A. I don't even know how to explain it. I didn't do anything.
15 So I was afraid. I wanted to talk to my sister. I just didn't
16 know. I was confused. I thought -- I don't know what was
17 going on. I know nothing like that happened when I was around.
18 Nothing in front of me ever happened. I just couldn't
19 understand it.

20 Q. What day was that?

21 A. That was the 25th of September.

22 Q. Of what year?

23 A. 2005.

24 Q. After that incident or discussion with Detective Arbuiso in
25 the precinct, did you get out of jail?

E4TUMCC4

McCaffrey - direct

1 A. No.

2 Q. After that when was the next time that you were out?

3 A. Of prison?

4 Q. Yeah.

5 A. September 1, 2009.

6 Q. So you stayed in from that point that you went to that
7 precinct and told them you didn't do it until 2009?

8 A. Yes.

9 Q. What is your educational background?

10 A. I went to school in the Bronx, completed almost the 11th
11 grade, dropped out because my dad was sick at the time. Didn't
12 go back to school until I was incarcerated. I obtained my GED
13 at Sing Sing Correctional Facility.

14 Q. Incarcerated on this rape case?

15 A. Yes.

16 Q. So you took your GED exam at Sing Sing?

17 A. Yeah. It is part of a mandatory, I guess, rehabilitation.

18 Q. What is your employment history?

19 A. I worked off the books my whole life, basically. '98, I
20 attempted to open up a company, attempted to obtain a d/b/a,
21 home improvement license in Suffolk County. Basically, I work
22 off the books. I'm a contractor.

23 Q. When you say that you worked off the book, does that mean
24 you didn't pay taxes?

25 A. Yes.

E4TUMCC4

McCaffrey - direct

1 Q. Did you hold any professional licenses or did you obtain
2 any professional licenses?

3 A. Just a home improvement license in Suffolk County which
4 means that you could work on construction, sheetrock,
5 insulation under subcontractors.

6 Q. What year was that?

7 A. 1998.

8 Q. Do you have any children?

9 A. I have two -- one's biological, one that I raised in the
10 courtroom. One is going to be 18 this year. The other one is
11 going to be 16.

12 Q. Let's talk about your biological son, what is his name?

13 A. John McCaffrey after my father.

14 Q. Is he the one who is in the courtroom?

15 A. No.

16 Q. Who is the mother of John McCaffrey, your son?

17 A. Jane.

18 Q. What is your relationship like now with John?

19 A. I don't have one since the arrest. Before the arrest, it
20 was strained, between 2005 and when I was arrested, I made
21 attempts to reach out to him when I was in prison, failed,
22 nobody, no answer to anything -- just at that point it was kind
23 of hopeless to even attempt with a rape case.

24 Q. So are you saying that your incarceration on the rape
25 frustrated your ability to reconnect with your son?

E4TUMCC4

McCaffrey - direct

1 A. It didn't start it, but it absolutely ended it.

2 Q. So you were trying, but it didn't make things easier?

3 A. Yes.

4 MR. GARBER: This would be a good time to break.

5 THE COURT: It is 1 o'clock, ladies and gentlemen, so
6 why don't we come back at 2. Don't discuss the case. Keep an
7 open mind. If you bump into anybody in the elevators -- the
8 lawyers or witnesses or anybody else -- obviously, don't
9 discuss or speak or even acknowledge -- be stoic, as I told you
10 yesterday.

11 Have a good lunch.

12 Ms. Kimbrough, could you stay behind.

13
14 (Continued on next page)

E4TUMCC4

McCaffrey - direct

1 (Jury not present)

2 (Ms. Kimbrough present)

3 THE COURT: Ms. Kimbrough, you had sent me a note.

4 And so the record is clear, it said is it relevant that I was
5 an SART volunteer for two years North Central Hospital in the
6 Bronx around the years 2006 to 2007 and that is a sexual
7 assault response team.

8 JUROR: Yes.

9 THE COURT: So you volunteered?

10 JUROR: Right.

11 THE COURT: How long did you do that?

12 JUROR: I was a volunteer for the weekended, they
13 would call me most weekends.

14 THE COURT: What did you do exactly?

15 JUROR: If somebody called in for somebody to come to
16 the hospital because somebody was raped, then I was there with
17 that patient or with that victim.

18 THE COURT: And you would talk to them about what they
19 experienced?

20 JUROR: I would talk to them. I would keep them calm
21 when the police was there. If they didn't have to see the
22 police, the police had to step back until they were ready, that
23 kind of thing. I was an advocate for the patient.

24 THE COURT: Did you get any training for?

25 JUROR: The hospital trained us.

E4TUMCC4

McCaffrey - direct

1 THE COURT: What did the training consist of?

2 JURORS: We had almost a year and a half of somebody
3 already being there that was a professional, teaching us what
4 to look for, what to say, how to say it, whether to touch the
5 people, listen to them. That kind of thing.

6 THE COURT: Classes?

7 JUROR: There were classes at the hospital.

8 THE COURT: You would also sometimes shadow an actual
9 professional.

10 JURORS: We learned right there in the hospital and
11 once we graduated, they put us in the hospital. We were on
12 call on weekends.

13 THE COURT: Now this case, obviously, has involved a
14 fair amount of testimony about a rape.

15 JURORS: That's why I wanted to find out from you if
16 it was relevant.

17 THE COURT: It is not whether it is relevant. I think
18 that the issue is what I asked you about yesterday: Do you
19 think that it would affect your ability to be fair and
20 impartial in this case?

21 JURORS: Not at all.

22 THE COURT: You think that you could follow my
23 instructions on the law?

24 JUROR: Yes I could.

25 THE COURT: And you could consider the testimony of

E4TUMCC4

McCaffrey - direct

1 the witnesses and consider the evidence introduced at trial?

2 JURORS: Yes.

3 THE COURT: And you would limit yourself to just the
4 evidence?

5 JURORS: Just what I hear.

6 THE COURT: Any questions from counsel?

7 MR. GARBER: No.

8 MR. LARKIN: No.

9 THE COURT: You had a question?

10 MR. LARKIN: No, your Honor.

11 THE COURT: So go have lunch. Don't discuss with any
12 of your fellows jurors what we have talked about in here. If
13 it turns out that you do actually have some lingering concern
14 that you can be fair and impartial, of course let me know.

15 JURORS: OK.

16 THE COURT: It is not a criticism that you feel that
17 way; it is not something that you should be ashamed of, it is
18 something that I think you need to tell me, if your fairness
19 and impartiality is going to be compromised in any way.

20 All rise for Mr. Kimbrough.

21 (Juror exits courtroom)

22 THE COURT: We are going to resume the direct of
23 Mr. McCaffrey.

24 How long to you have?

25 MR. GARBER: 40 minutes.

E4TUMCC4

McCaffrey - direct

1 THE COURT: The cross?

2 MR. LARKIN: At least an hour.

3 THE COURT: I am wondering about Ms. Pujols. We told
4 her to be here at 2, so she will have to wait a bit.

5 MR. GARBER: Based on the way things are progressing I
6 was not going to have any witnesses beyond Ms. Pujols for this
7 afternoon.

8 THE COURT: I don't know how long she is going to
9 take. Just make sure that you have a witness that is ready to
10 go if and when Pujols stops today.

11 Was there a knock? Let's see what the knock is for.

12 While we are waiting for the knock, anything else that
13 we need to cover before lunch?

14 Let me see what it is. Are you all right?

15 DEPUTY CLERK: Someone needs their bag.

16 THE COURT: You can give it to her.

17 Be on time at 2. We want to start right away.

18 Thanks a lot.

19 (Luncheon recess)

20

21 (Continued on next page)

22

23

24

25

E4t0mcc5

1 AFTERNOON SESSION

2 2:00 P.M.

3 THE DEPUTY CLERK: All rise.

4 THE COURT: Have a seat. Let's get the jury.

5 Is there anything we need to discuss before the jury
6 comes?

7 MR. GARBER: No.

8 THE COURT: Okay, Mr. McCaffrey, come on back up to
9 the stand.

10 (Witness resumes the stand)

11 THE COURT: We are going to go a little bit after
12 five. I teach, at Columbia, so we'll have to get out a little
13 bit early by 5:20. So if we finish about 5:10.

14 MR. GARBER: I teach at Brooklyn Law School, I teach
15 at 6:00, so I have a similar situation, so if we can end at
16 5:15.

17 THE COURT: That's fine.

18 THE DEPUTY CLERK: All rise for the jury, please.
19
20
21
22
23
24
25

E4t0mcc5

(In open court)

(Jury present)

THE COURT: Okay, have a seat. Let us know if we can make you more comfortable, anything you are hankering for let us know, soft drink, let us know, we'll try to accommodate you within reason.

We'll probably take a break at about 3:30-ish today. Hopefully then the cookies and stuff will arrive. We were shortchanged yesterday.

Today we'll probably finish about 5:15 or so, little earlier. So we won't be going until 5:30 today, all right.

Mr. Garber, let's resume the direct examination of Mr. McCaffrey.

DIRECT EXAMINATION (Continued)

BY MR. GARBER:

Q. Wil, I believe where we left off, we were talking about your, I think your professional license.

A. Yeah, I obtained the home improvement license in Suffolk County to do interior construction.

Q. Okay. Now in addition to -- you said Sally being in the audience, who is in the audience for you?

A. My son, brother-in-law, and I guess commonlaw wife.

Q. What is her name?

A. Ida Figueroa.

Q. How long have you been with Ida?

E4t0mcc5

McCaffrey - direct

1 A. On and off, 14 and a half years.

2 Q. And she's stuck by you throughout this ordeal?

3 A. Primary, mostly --

4 THE REPORTER: I can't hear.

5 Q. Do you have child with Ida?

6 A. I raised her son Justin as my own since he has been a year
7 old, so he's mine.

8 Q. Justin is in the audience?

9 A. Yeah, he is in the audience.

10 Q. With the crew cut.

11 A. Yeah.

12 Q. You're not a choirboy, are you?

13 A. Absolutely not.

14 Q. You have been in trouble before?

15 A. Frequently.

16 Q. Okay. Well, let's start. Before this wrongful conviction
17 for rape, you were arrested?

18 A. Couple of times.

19 Q. Okay. When you say a couple, you are smiling. Is it more
20 than a couple of times?

21 A. Yes.

22 Q. Okay. Tell them about your criminal history.

23 A. It's not extensive, it is -- I have had my scrapes with the
24 law. I have been arrested maybe eight times, to ten times. I
25 mean I can go through each arrest with you, if you want.

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McCaffrey - direct

1 Q. Yeah, tell them.

2 A. I don't know the dates exactly.

3 Q. It's okay. Do the best you can. Tell them what you were
4 convicted of, okay. Tell them a little bit about the cases?

5 A. They are not going to be in order. I mean there is a
6 situation in 1998. I had one of my workers, I'm going to give
7 a brief explanation, I'm not saying it justifies or defines
8 what I did or that I was innocent, I pled guilty to the charges
9 that I had done.

10 MR. LARKIN: Objection, your Honor. Can we have
11 question and answers.

12 THE COURT: I'm not sure what the -- I'm not sure --
13 what is the question? You want him to list all of his prior --

14 MR. GARBER: I asked him to explain his criminal
15 history, and he's doing it.

16 THE COURT: I don't want a narrative answer. You have
17 to do a direct that asks a little more. Focus him.

18 BY MR. GARBER:

19 Q. You'll start, and I'll try to followup with questions to
20 keep this a little bit more specific. 1998, you said?

21 A. Yeah, I was arrested for assault. I pled guilty to the
22 assault three. Involved a situation where a man tried to, you
23 know, force his way into my house. It was like a -- a little
24 small office area during the same time that I first opened that
25 company. There was a kitchenette, there was a knife there.

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McCaffrey - direct

1 During the struggle, he got hurt with the knife. It escalated
2 outside of the dwelling. And then I was arrested. I turned
3 myself in. I went through the process. And I was convicted of
4 assault three, misdemeanor assault, yes.

5 Q. And did you do any jail time for that?

6 A. No, I received probation.

7 Q. Okay. Did you have to spend like a day in jail or --

8 A. Yes, 24 hours to 48 hours.

9 Q. And that's the booking process, right?

10 A. Yes.

11 Q. And you go to see a judge, and your case gets resolved
12 then?

13 A. No, I -- it was bail. And then I kept going to court while
14 I was working.

15 Q. So you got out on bail.

16 A. Yeah.

17 Q. Next one, or another one. We are talking before the rape,
18 wrongful conviction for the rape.

19 A. I was in a cab one time coming home. I thought I had the
20 money on me, I didn't. I pull up in front of my building. My
21 sister lives on the first floor. I explained to the cab driver
22 let me knock on my sister's apartment. It happened after that,
23 you know, the cops are coming, I lived right next door to the
24 precinct. I'm explaining, cop stopped me, said if I had that
25 money. I told them if I could call her. He said no. I got

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McCaffrey - direct

1 arrested. It was like paying a ticket. I paid a fine in the
2 court and --

3 Q. When you say you're not explaining, you are not telling
4 them I didn't do it.

5 MR. LARKIN: Objection, leading.

6 A. I'm trying give a little bit of insight.

7 THE COURT: Watch the leading.

8 Q. Elaborate on your statement that you said to me about
9 you're not explaining?

10 A. I'm not trying to justify or explaining, I'm just trying to
11 give a little bit of insight into ran off, as an offense.

12 Q. How about another one.

13 A. I got arrested for another situation involving a fight with
14 a police officer on Halloween. I came outside, they were
15 beating up on my cousin. And I -- I interjected. The crowd
16 dispersed. I lived there. I'm not going nowhere. The cops
17 responded. I resisted arrest, because I was -- I didn't do
18 nothing. Not the fact that I actually was innocent, I was
19 fighting. I lived there. I thought I had some kind of right.
20 And cop went to handcuff me, my family was involved, my sister
21 Sally, everybody was involved was there. I resisted arrest and
22 I was arrested for assault. During resisting arrest, I pulled
23 away from the cop, I got charged with assaulting an officer. I
24 pled out to a misdemeanor assault charge for fighting with the
25 individuals.

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McCaffrey - direct

1 Q. What else?

2 A. I can't recall. I have had extensive jail. I spent like
3 two days in jail. And either result in a fine, or they just --
4 they just don't prosecute. Trespassing charge, or --

5 Q. Any DWIs?

6 A. I got a DUI in New Hartford County. I was visiting
7 somebody in college. Pulled me over. I blue a .09. I pled
8 out and received 500-dollar fine.

9 Q. Okay. Prior to going to maximum security -- well, did you
10 go to maximum security prison on this rape charge.

11 A. Yes.

12 Q. We're going to talk about that in a minute. But prior to
13 getting convicted on this, wrongfully convicted on this rape
14 charge, did you ever serve any time in county jail?

15 A. From the arrest in 1998, with the situation with the knife,
16 I received three years misdemeanor probation. I transferred my
17 probation for Suffolk County to the Bronx. My sister, there
18 was a fire. And my brother-in-law got hurt. I came to the
19 City. I transferred my probation. During that transition,
20 that situation happened with the Halloween arrest and I
21 violated probation and had to do four and a half months on
22 Rikers Island in C76.

23 Q. And that was punishment for the violation of probation?

24 A. Yeah, stemming from the misdemeanor probation. It was
25 misdemeanor time, but it was, still, I had to go to Rikers

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McCaffrey - direct

1 Island.

2 Q. Okay, so we're focusing, right now, on the three wrongful
3 conviction arrests or incarcerations --

4 MR. LARKIN: Objection to the narrative, your Honor.
5 I mean, really.

6 MR. GARBER: I'm setting it up, okay.

7 MR. LARKIN: Objection.

8 THE COURT: All right, you don't get to do that, okay.
9 You get to make an objection to me, or respond to me.
10 But if you guys want to talk to each other, then we're going to
11 have a problem.

12 So, Mr. Garber, you don't get to do that. This is not
13 a street corner, this is a courtroom, so I want you to remember
14 that.

15 MR. GARBER: Okay.

16 THE COURT: So go ahead. What is the question.

17 MR. GARBER: Okay.

18 Q. We are focusing, right now, on your prewrongful conviction
19 arrests, okay.

20 A. Yes.

21 Q. Are there other than the ones that you described, are there
22 other ones that you maybe forget?

23 A. There was an incident in the store near my neighborhood. I
24 got into an argument with the owner, exchanged heated argument,
25 a fight broke out. His son ended up getting hit during the

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McCaffrey - direct

1 fight. He was young at the time. I pled guilty to it. It
2 was -- it was assault three, resisting arrest. Like I said, I
3 did these charges, I pled guilty to them for a reason.

4 Q. Okay. And in this case, you did not plead guilty, right?

5 A. No.

6 THE COURT: In which case?

7 MR. GARBBER: In the wrongful conviction rape case.

8 A. No, I -- I didn't do anything wrong.

9 Q. And you asserted your innocence?

10 A. From the beginning.

11 Q. And then, as a result of that, you went to trial?

12 A. Yes.

13 Q. And got convicted anyway?

14 A. Yes.

15 Q. Now, let's go back in time to after your arrest in this
16 case. You said that you couldn't make bail, right?

17 A. Yeah, it was \$50,000. It was too much.

18 Q. Your family couldn't afford it?

19 A. No.

20 Q. Okay, what happens. Tell the jury what happens when you
21 can't make bail prior to a trial.

22 A. See, in the same situation where they would send me for
23 violation of probation, it is a different part of Rikers
24 Island. It's C76, City sentence. If you don't get community
25 service stemming from small fights and situations like that,

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McCaffrey - direct

1 anything under 8 months or under a City year, you go there to
2 complete your time. You're separated from the rest of the --
3 the rest of the criminals that are detained there.

4 When you commit rape, you go to a different complete
5 building, maximum security on Rikers Island, where I went. It
6 is GRVC. The prior situation, where I went for misdemeanor,
7 was like A dorm situation; no uniforms. And GRVC, you are, you
8 have your clothes in cells, in-house feeding, no movement.
9 You're not able just to wander around in the jail. I got to
10 fight for my case, I'm fighting for a rape charge. You know,
11 it is horrible, you know. You know, between the law library
12 and everything you can, and trying to proclaim your innocence,
13 it's just a completely different situation than the first time
14 I was in jail. It's --

15 Q. Did you ever tell any inmates you were innocent while you
16 were on Rikers Island awaiting trial?

17 A. I tried. They didn't believe me. They -- they believe
18 whatever you are arrested for, you either get around it or
19 plead guilty to it. You know, you hear rape, and I guess you
20 get singled out. Like in every other situation, they try to
21 prevent you from either using the phone, or worry about using
22 the shower or, you know, getting -- inmates serve the food.
23 And it's the same situation like, you know, most detention
24 places like that. In reference to C76, it's a little bit
25 different. But foodwise, you know, in C76, you go to the mess

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McCaffrey - direct

1 hall where they are overseen, certainly, of your food.

2 In this situation, they bring the food to where you
3 live at, and they disburse it. Because you can't, due to my
4 crime, everybody else's crime, I'm with hardened criminals,
5 people facing murder, multiple robbery convictions. There is
6 nobody there for jaywalking or violation of misdemeanor
7 probation.

8 MR. LARKIN: Objection to all this, your Honor.

9 THE COURT: Well, I think it is becoming a narrative
10 answer. So let's ask the next question.

11 Q. Well, let's get to the head here, if we can, which is was
12 the experience that you had at Rikers Island, between
13 September 25th, 2005 and the trial, different than the
14 experience you had at Rikers Island for that four and a half
15 months on the violation of probation?

16 A. I was there for a short bit of time. I knew when I was
17 going to go home. I made a mistake. I tried to own to it. I
18 knew I was going home in four and a half months. Now, I'm in
19 GRVC fighting for my life, and trying to tell anybody that
20 would listen to try to prove my innocence. Something that, you
21 know, I'm facing a lot of time in prison. The unknown. Like I
22 don't know what's going to happen. I think I'm going to go
23 home, because I'm innocent, but then again, you know.

24 Q. What were you charged with?

25 A. Rape in the first degree. Three counts. I got charged for

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McCaffrey - direct

1 everybody that was in the car. But nobody else got charged, so
2 I have three counts of rape in the first degree.

3 Q. Let me stop you for a second. You said nobody else got
4 charged?

5 A. No.

6 Q. So your co-defendants, or other people who were -- that
7 Ms. Peguero claimed raped her, they did not get charged, but
8 you did?

9 MR. LARKIN: Objection, foundation and knowledge, your
10 Honor.

11 A. No, she --

12 THE COURT: Well, overruled. Do you know whether
13 anyone was charged with you?

14 THE WITNESS: Yeah. Nobody was charged, your Honor.

15 THE COURT: Okay.

16 Q. You lived through a pretrial situation and up until trial
17 in this case, right?

18 A. Yes.

19 Q. You went to Court a number of times on this case before
20 trial?

21 MR. LARKIN: Objection, leading. Counsel is
22 testifying now.

23 THE COURT: Watch the leading.

24 MR. GARBER: Sure.

25 Q. Did you appear in Court?

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McCaffrey - direct

1 A. Yes, numerous times. I testified in a grand jury.
2 Declared my innocence. Everything. I went pretrial. I was
3 fighting. I didn't -- I didn't entertain any offers that they
4 offered me, no matter what the time was.

5 THE COURT: The question was did you appear in Court.

6 THE WITNESS: Oh, sorry.

7 A. Yes.

8 THE COURT: Next question.

9 Q. So you learned, you learned about the fact that you were
10 the only one moving forward on that case?

11 MR. LARKIN: Objection, same thing.

12 THE COURT: Overruled.

13 A. Yes.

14 Q. How did that make you feel?

15 A. Terrible. Terrible. Like I didn't do anything. But then,
16 again, if they're claiming that three people raped them, or
17 raped her, or whatever that the allegation was, why am I the
18 only one being charged for everybody's crime.

19 Q. How long were you in pretrial detention prior to your
20 trial?

21 A. 13 months.

22 Q. Did you get any visits from your family?

23 A. Yes.

24 Q. Was your relationship with your family affected in any way
25 during that pretrial incarceration?

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McCaffrey - direct

1 A. Of course. They are coming to visit me, and they're
2 telling me, you know, like don't worry, everything is good.
3 You know, like I know it's not. My case is in the newspaper,
4 you know, my -- just -- it's public. They are getting
5 scrutinized probably for standing behind me because I'm
6 innocent. So my family is getting pressures from the street:
7 How could you support that, after he did that.

8 Q. You said --

9 A. You know, it's --

10 Q. -- you said that your case was in the news. What
11 newspapers?

12 MR. LARKIN: Objection to this.

13 THE COURT: Overruled. Maybe, if you know.

14 Did you see anything in the newspaper?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Okay. You can answer.

17 A. I received them in Rikers Island; Daily News, The Post. I
18 heard it on 1010 WINS, Hot 97 spoke about it. It was not -- it
19 was not a secret.

20 Q. Now, I believe that you said that when you were first
21 brought in and questioned by Detective Arbuiso, he used
22 profanity toward you, and said that you were going to be going
23 to jail for a long time; right, words to that effect?

24 A. Yes.

25 Q. Did you learn of any contact that he had with your family

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McCaffrey - direct

1 about this case?

2 A. Well --

3 MR. LARKIN: Objection to that.

4 THE COURT: I mean sustained.

5 Q. Well, was there anything that happened, or was your family
6 affected at all for communicated to you anything about
7 information they learned from the police?

8 MR. LARKIN: Objection, objection.

9 THE COURT: I'm thinking as to why this would be
10 relevant, and whether it is being offered for the truth.

11 MR. GARBER: It is not. And I could explain, if you
12 like.

13 THE COURT: Let's have a sidebar.

14 (Continued on next page)

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McCaffrey - direct

1 (At the side bar)

2 THE COURT: I mean you really are offering this for
3 the truth. You are offering this to show his family told him
4 what the detectives did. The jury can take that to the bank as
5 true. And if it also had an impact on his mental state, that
6 is --

7 MR. GARBER: That's why I'm bringing it up.

8 THE COURT: You're offering it, really, for the truth.

9 MR. GARBER: To show his damages. I don't know if --
10 if she's lying to him about what was stated. She came to the
11 precinct to try and get him, and she had no access to him. And
12 the cops said, words to affect, your fuckin' brother is going
13 away, he is a fucking rapist. And this was communicated to him
14 by Sally. And while he was in, he as really suffering --

15 THE COURT: You can't elicit whether he had visits
16 from his sister and things like that, but --

17 MR. GARBER: I think it is relevant to damages. But I
18 think Arbuiso is going to testify, he could deny that he said
19 that to her, if it's not true. I mean because it's malice,
20 callousness --

21 THE COURT: But the problem is it's hearsay. The
22 assertion that the detective said these things, is all from an
23 out-of-court statement by the sister.

24 MR. LARKIN: Mr. McCaffrey --

25 MR. COHEN: The statement, itself, is coming in only

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1 because the statement is being made, not whether it is true
2 that he's a fuckin' rapist. It is coming in to show that
3 Arbuiso stated that that's -- whether --

4 THE COURT: So the argument is because Arbuiso called
5 him a rapist, he was harmed that much more, because he has such
6 a high opinion of Arbuiso? The fact is, The Daily New says
7 it's bad, but if Arbuiso said it, it makes him psychologically
8 more damaged?

9 MR. COHEN: Part of the case is the intentional
10 violation of his civil rights.

11 THE COURT: So you're offering it for the truth.

12 MR. COHEN: No, no. No. No, the intention, violation
13 of civil rights, that would be supported by statements made by
14 Arbuiso.

15 THE COURT: Seems you are offering for the truth.

16 MR. GARBER: State of mind.

17 THE COURT: It is an out-of-court statement. It is
18 his sister's statement about what Arbuiso said that you are
19 trying to introduce. Isn't that an out-of-court statement
20 offered for the truth.

21 MR. COHEN: The factual basis in the statement is not
22 being offered for the truth of what that statement is. That is
23 that he was a fucking rapist.

24 THE COURT: The truth that Arbuiso said it.

25 MR. COHEN: That's it. Just that it was said.

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McCaffrey - direct

1 THE COURT: Okay. That's being offered for the truth.

2 MR. COHEN: That Arbuiso said it?

3 THE COURT: Yeah.

4 MR. LARKIN: McCaffrey didn't hear him say it. He
5 didn't hear him say it. He is going to repeat what somebody
6 else supposedly heard him say. So I believe your Honor is
7 correct, clearly hearsay.

8 THE COURT: Arbuiso is going to take the stand. You
9 can ask him if he said those things. I don't think it adds to
10 his psychological damage, because Arbuiso said this to his
11 sister.

12 MR. GARBER: Well, he was damaged by it, okay. So I
13 mean I know that from my prep. But I think you're ruling
14 against us. I don't know if we have to keep going especially
15 if we ask Arbuiso about it. I'm sort of implying that it might
16 have happened anyway, so I don't want to necessarily --

17 THE COURT: I think it is being offered for the truth,
18 to the extent -- I'm not going to allow it in, bring out his
19 own damage from the wrongful rape accusation and eventually
20 from the conviction, okay.

21 MR. COHEN: May I raise two other quick points, since
22 we are up here.

23 Number one that Mr. Garber keeps soliciting testimony
24 about newspaper articles, and the concern with any jury trial
25 is that a jury is going to look up --

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McCaffrey - direct

1 THE COURT: I have told them not to look anything up,
2 if they do that they are in big trouble.

3 MR. COHEN: The second thing is that Mr. Garber keeps
4 referring to it as a wrongful conviction. And I think, as your
5 Honor raised it, I think more appropriately that the wrongful
6 accusation would be more appropriate than to refer to it as a
7 wrongful conviction. He is saying as fact --

8 THE COURT: Well, there is a wrongful accusation which
9 then later blossoms into a wrongful conviction. You are not
10 disputing that, are you?

11 MR. COHEN: I don't want the jury to misinterpret
12 anything that Mr. Garber is saying by that. I mean they are
13 not going to be -- that's -- I mean that's -- this case is not
14 about that. This case is about right to a fair trial claim.

15 THE COURT: I get that. But I'm going to instruct the
16 jury on all of that, so.

17 MR. GARBER: Just so you know, he is very skittish.
18 And the reason why I keep referring -- when I talk to the rape
19 charge, when I am talking to him outside, he freaks out. So if
20 I don't say wrongful rape charge, it's not fair to him. To
21 him, that's what it is, so that's why I'm phrasing it that
22 way.

23 MS. ZGODNY: If we could --

24 THE COURT: I'm not too worried about that. The jury
25 is going to be very well instructed as to what the issues are

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McCaffrey - direct

1 for this case, and what the claims are for this case. But
2 there was a wrongful conviction. He was wrongly convicted,
3 right, no one is disputing that?

4 MR. LARKIN: Of the rape.

5 THE COURT: Yeah.

6 MR. LARKIN: All right, thank you.

7 (Continued on next page)

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McCaffrey - direct

1 (In open court)

2 THE COURT: Sorry about that. We don't do too many,
3 but once in a while it's necessary to make sure we're all on
4 the same page. So that's what we just did.

5 Mr. Garber, you can proceed.

6 MR. GARBBER: Thanks.

7 Q. When you talk about your sister, you are talking about
8 Sally?

9 A. I don't know her as my aunt, I'm raised by my grandmother,
10 but I call her my mother. And my sister. I know it's
11 complicated explanation, but --

12 Q. Out of all your family members, who is the one you are
13 closest to?

14 A. My sister.

15 Q. Sally?

16 A. Yes, right there.

17 Q. Right. On the right.

18 A. Yup.

19 Q. Okay. We did a reenactment of your trial here at this
20 trial, okay. And I think you said earlier on in your
21 examination, that was difficult for you to listen to, right?

22 A. Extremely.

23 Q. Okay. I'm sorry to do this, but can you go back in time to
24 2006, and put yourself back at that trial when was happening in
25 real time. And tell the ladies and gentlemen of the jury what

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McCaffrey - direct

1 you were feeling as you were sitting there in that court,
2 dealing with that.

3 MR. LARKIN: Objection, your Honor. I think this was
4 asked already.

5 THE COURT: I think you did ask.

6 MR. GARBER: I asked in the context of the reenactment
7 here, and the opening statements.

8 MR. LARKIN: I thought the questions were asked.

9 THE COURT: I thought so, too. So I want to take a
10 look.

11 MR. GARBER: Actually, I could help you. I think in
12 the beginning, I asked a very general question --

13 THE COURT: Let me just look at this one second.

14 "Tell this jury what it was like to sit through a
15 criminal trial, accused of a horrible crime like a rape that
16 you did not commit."

17 Asked and answered. You already asked that.

18 Okay, next question.

19 Q. How were you treated by the court personnel during your
20 trial?

21 MR. LARKIN: Objection, your Honor.

22 THE COURT: Overruled. You can answer.

23 A. Well, horrible. I'm here for rape. I'm not on bail, so
24 they figure family don't care, they don't understand about
25 financial problems. You know, it is crazy. You got to wake up

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McCaffrey - direct

1 at 3:30 in the morning. You are sleep deprived by the time you
2 get to Court. You get to Court little after 4:00. You are not
3 called into court until opening time, at 9:30, 9:00. You
4 already wore down, you know. And then you're mentally
5 exhausted from, let alone I run through things in my mind
6 constantly that I didn't do anything. You know, I'm concerned
7 about, you know, my family. And were they treated properly.
8 And how do they feel. I have to be escorted out in handcuffs,
9 and -- and just -- and just the plain and simple, the whole
10 fight in general, everything, the way they treat you is not
11 nice at all.

12 Q. Okay. I'm going to stop you every now and then, okay.
13 During the trial, there was a point where the defense called a
14 witness, remember?

15 THE COURT: A witness?

16 Q. A witness, Peguero Delacruz.

17 A. Yes.

18 Q. And you listened to that here, today, right?

19 A. Yes.

20 Q. While you were listening to his testimony about the fight
21 in the parking garage, what was going through your mind?

22 A. I'm like, yes, because the only -- I couldn't -- the
23 injuries, my criminal history, her testimony, injuries. I
24 messed up, fine, I understand. My criminal history, she's
25 lying. How did the injuries get there. And, finally, I had

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McCaffrey - direct

1 somebody up there testifying, trying to explain that they
2 witnessed what they seen. And it's like the district attorney
3 sat up there and ripped him apart over a ticket for him selling
4 alcohol in a store that he doesn't even own or insinuating that
5 he took favors. What, parked the car and didn't put in a
6 ticket in, and making \$10?

7 MR. LARKIN: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: This is something I lived with.

10 THE COURT: Sustained means --

11 THE WITNESS: Sorry, your Honor, I apologize.

12 THE COURT: It's okay. Just stop, that's okay.

13 Next question.

14 Q. Is it fair to say your heart rose when you heard him on
15 direct, but it changed when you heard him on cross?

16 MR. LARKIN: Objection.

17 THE COURT: I'm not sure that the heart's rising is
18 relevant to the case. Sustained.

19 Okay, next question.

20 BY MR. GARBER:

21 Q. Do you remember when the verdict was read?

22 A. Clearly.

23 Q. Tell them about it.

24 A. Came back with a verdict of guilty. And I just went numb,
25 I couldn't believe it, it was surreal. I could hear my

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McCaffrey - direct

1 grandmother crying in the background, my sister. I didn't do
2 it. Well, you know, how much evidence do you need, like.

3 Q. Did you think that the jury was going to believe you when
4 you testified?

5 A. I was telling the truth. I would hope that they would
6 believe me. I mean I was not lying.

7 Q. How did it make you feel when you heard your family
8 reacting and crying when the verdict was being read?

9 MR. LARKIN: Objection.

10 THE COURT: Overruled. You can answer.

11 A. Terrible. I couldn't believe that they had to go through
12 this with me. If it was me, fine, I'll deal with it. But
13 knowing that it is going to affect them, and how it -- you
14 know, wondering if they knew I was going to be all right, and
15 that I'm not going to give up, and I'm not going to go and
16 commit suicide because I got convicted of a crime that I didn't
17 do. Just -- rape? I didn't do anything. I didn't touch a
18 female. I didn't do anything. I mean I'm fighting through the
19 whole situation. I thought at the end that, you know, I would
20 win. That somehow, you know, the lying would come out in the
21 trial. You know, the justice system would prevail. And it
22 didn't. Like I said, I'm not innocent of other things, but I
23 did not do that. I didn't touch this girl. I didn't kiss her,
24 I didn't do anything, let alone.

25 THE COURT: Let me interrupt you for a second, Mr.

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McCaffrey - direct

1 McCaffrey. I know it is a very emotional thing. I want you to
2 just answer the questions that are put to you.

3 The only question was how did it make you feel when
4 you heard your family reacting and crying when the verdict was
5 read.

6 Try to limit yourself.

7 A. Hopeless.

8 Q. Okay, let's -- after the verdict, there is something called
9 a sentencing; right?

10 A. Yes.

11 Q. Is that the same day as the verdict?

12 A. No, it's two weeks later.

13 Q. Okay. Tell them about your sentencing.

14 A. You know, well, before I get sentenced, you know, they want
15 to send somebody to my cell at a time and have them ask me
16 questions. You know, like, do you feel sorry for the rape you
17 committed and --

18 MR. LARKIN: Objection, objection to --

19 THE COURT: Wait, wait. Let me resolve the objection.

20 THE WITNESS: I'm sorry.

21 THE COURT: The objection is what.

22 MR. LARKIN: I think the narrative part of it is
23 hearsay, too.

24 THE WITNESS: Pretrial.

25 THE COURT: I don't think it is being offered for the

E4t0mcc5

McCaffrey - direct

1 truth. Overruled on hearsay.

2 Let me see. The question is: Tell them about your
3 sentencing.

4 I think that's a -- let's focus the question better
5 than that, Mr. Garber.

6 MR. GARBER: Okay.

7 BY MR. GARBER:

8 Q. You were discussing the presentence interview?

9 A. Yes.

10 Q. Okay. And this amounted to the discussion you had with the
11 probation officer?

12 A. I denied it. I didn't do anything wrong. I didn't feel
13 like I had to explain myself anymore.

14 Q. But they wanted you to admit?

15 A. They wanted me to go there and plead with them, before I
16 went to the sentencing. That's why I thought it was in
17 reference to this. Because if I went to them and told them I
18 was sorry for this crime at sentencing --

19 MR. LARKIN: Objection.

20 THE COURT: Sustained. I don't think the witness is
21 in a position to testify about what they wanted, so sustained.

22 Next question.

23 Q. Did they ask you to be remorseful?

24 A. They told me, upon what I say in this pretrial interview,
25 is how the judge is going to sentence you.

E4t0mcc5

McCaffrey - direct

1 Q. Okay. What did you tell them?

2 A. I didn't speak to him. I denied the interview.

3 Q. Now, let's now fast forward to sentence two weeks after.

4 Was your family there?

5 A. Yes, all of them.

6 Q. And what sentence did the judge pronounce?

7 A. He found me -- I got found guilty on three counts of rape
8 in the first degree, even though it was one girl; kidnapping, I
9 blew trial on every count that was there. And I got sentenced.
10 It was 20 years for rape one; 20 years for rape one; 20 years
11 for rape one; seven and a half to 14 for the kidnapping; 15
12 years for the kidnapping. And then I just stopped counting
13 after 80 years.

14 Q. What sentence did you think the judge gave you?

15 A. I thought I had to do all of that time.

16 MR. LARKIN: Objection.

17 THE COURT: Overruled.

18 But it turns out you didn't.

19 THE WITNESS: Yes, your Honor. I didn't understand
20 everything. Falls under a 40 years, that was the --

21 THE COURT: Concurrent.

22 THE WITNESS: Yes.

23 THE COURT: So at some point you learned that it was
24 concurrent?

25 THE WITNESS: Yes. After I went to Rikers Island.

E4t0mcc5

McCaffrey - direct

1 Q. So, at first, you thought it was more than 20 years, okay.
2 And then you learned it was 20 years?

3 A. Yes.

4 Q. Well, was that comforting to know it was only 20 years?

5 MR. LARKIN: Objection.

6 A. No.

7 THE COURT: Overruled. You can answer.

8 A. Twenty years? For something I didn't do. It couldn't
9 remotely be: Okay, well, at least I got 20. I didn't do
10 anything. I thought I was going to go home.

11 Q. So where did you go after Rikers Island after you were
12 sentenced?

13 A. Downstate Correctional Facility.

14 Q. And then where?

15 A. Sing Sing Correctional Facility.

16 Q. Is that a max --

17 A. Yes that's a Max A.

18 Q. Tell them what a Max A is?

19 A. That's where they send all of the real criminals; murderers
20 and robbers. You have to have, you know, a lot of time to go
21 there. And it's not just New York City criminals. It is all
22 New York State. That's where every murderer went. That's
23 where the worst of the worst are.

24 MR. LARKIN: Objection to the -- at this point, the
25 question is what is a max, I think.

E4t0mcc5

McCaffrey - direct

1 THE COURT: Overruled.

2 Okay, next question.

3 Q. What about -- well, tell them just sort of a litany, okay,
4 of the different facilities, prisons, state prison facilities
5 you went to during that -- what was it, the three years after
6 your verdict?

7 A. I went from Downstate Correctional Facility, to Sing Sing
8 Correctional facility, between November and May 2007. I got
9 transferred to Five Point Correctional Facility. Sing Sing is
10 in Ossining, New York. It was not too far from New York. I
11 could get visits. They sent me six hours upstate to Romulous
12 New York, to Five Point Correctional Facility. And from there,
13 after I put in a transfer, they moved me to Greenhaven
14 Correctional Facility. They are all maximum security prisons.
15 With walls.

16 Q. What about going to those facilities as a rapist, a
17 convicted rapist?

18 MR. LARKIN: Well, objection. I mean I think that
19 does call for a narrative. It is "what about."

20 THE COURT: Yeah, I think let's ask some more
21 pin-pointed questions than that.

22 Go ahead.

23 Q. Well, the fact that you went in, not only as someone facing
24 20 years, but facing 20 years for rape, did that designation,
25 rape, did that affect your prison sentence?

E4t0mcc5

McCaffrey - direct

1 A. Extremely so.

2 Q. Tell them.

3 A. You got to understand, everybody has mothers, sisters that
4 support them in prison, regardless; you know, murderers and the
5 worst of the worst. Going to jail as a rapist, I don't want to
6 say it gives them some kind of honor or dignity to single
7 somebody out, but that's exactly what happens. They are not --
8 they are like, you know, I'm here for this, but, you know,
9 you're a fucking rapist. And labeled for a rape. The police
10 officers make sure that the inmates know what you are there
11 for, if they don't find out for themselves or read about you in
12 the newspaper. It's terrible. You also have to look over your
13 shoulder, something bad happening to you, you know. People
14 have bad things happen to their family in the street while they
15 are in prison. And they look for an escape to take that out on
16 you.

17 Q. How about the guards, how did they treat you?

18 A. Guards are just as bad. They don't send like the nice,
19 nice guards to maximum security prison to deal with the worst
20 of the worst. They are hardened themselves. They are also
21 doing time, in a different manner. And in their aspect, those
22 prisons are ran by the guards. They don't have civilian people
23 that you work for. You work for the officers themselves. So
24 while you are working for them, obviously they know your case
25 and they that's why I couldn't get certain jobs and had to work

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McCaffrey - direct

1 in certain places.

2 MR. LARKIN: Objection.

3 MR. GARBER: Okay, well, let's -- I'll stop --

4 Q. Let's talk about prison jobs. Tell them about the jobs, if
5 the job opportunities are the same?

6 A. I was not able to work around any civilians. I couldn't be
7 around -- I couldn't -- I couldn't clean the -- the cells that
8 they hold inmates in before they see the counselors because of
9 their interaction with the counselors. Or I couldn't have the
10 job that exposed me to certain people. Or to certain areas.
11 My classification, even though I was in maximum security prison
12 was more intense than everybody else's. I had to work in the
13 block, which is equivalent to putting another box inside of
14 Home Depot, and I had to stay inside there. Even though the
15 jail is immense, I'm limited to different areas. I couldn't
16 just work anywhere. And then the jobs that I could get, these
17 different areas, cops wouldn't want to hire me because I'm a
18 rapist. And then they let everybody else know you are a
19 rapist. You know, it's bad enough I'm in prison, you know, I'm
20 around other people convicted of doing --

21 MR. LARKIN: Objection.

22 MR. GARBER: Okay.

23 THE COURT: Sustained. I'm sustaining the objection,
24 just because it is becoming a narrative.

25 So let's make sure we pepper this with questions and

E4t0mcc5

McCaffrey - direct

1 answers, not just a long narrative.

2 THE WITNESS: I'm sorry.

3 THE COURT: That's all right. You don't have to
4 apologize.

5 Go ahead.

6 Q. What about conjugal visits, did you get any conjugal
7 visits?

8 A. I tried to get with -- my sister, I was not married at the
9 time. You can have something called FRP, Family Reunion
10 Program. My sister could come. And grandmother could,
11 situations like that. I got denied FRP because of my crime.

12 Q. Let's slow down, okay. When you say, you said Family
13 Reunion Program.

14 A. Yeah, they have trailers where you --

15 Q. Tell them what --

16 A. You get to stay with your family for a weekend. They cook
17 food for you. It's like a household environment, but for
18 important the weekend. And they come on Friday, and then they
19 leave Sunday. You get to spend a couple of nights with them,
20 and then you go back to the population after the FRP. Because
21 of my crimes, I was not suitable to be around my family or to
22 have the same interactions, but murderers and people like
23 that --

24 MR. LARKIN: Objection. Objection.

25 MR. GARBER: Well --

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McCaffrey - direct

1 Could we close -- there is some noises going on out
2 there.

3 THE COURT: Go ahead and close it, Chris.

4 BY MR. GARBER:

5 Q. Were you treated differently than murderers because of the
6 fact you were there on a rape charge?

7 A. Well, I couldn't do FRP, but the guy from Amityville
8 Horror, which lived on my company. Ronnie Defeo, people make
9 movies about, he could go in and get passes --

10 MR. LARKIN: Objection.

11 A. -- and have something --

12 THE COURT: Do you know --

13 A. -- but my family can't go because I got --

14 THE COURT: -- why you didn't get the family --

15 THE WITNESS: Because of my crime.

16 THE COURT: How do you know that.

17 THE WITNESS: Because FRP wrote me back and told me
18 that.

19 THE COURT: When you say "they," who is they?

20 THE WITNESS: Family Reunion Program.

21 THE COURT: They said what.

22 THE WITNESS: They said you are denied because the
23 intensity of the crime. Same reason I couldn't go to college
24 and things like that in jail.

25 THE COURT: Okay, next question.

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McCaffrey - direct

1 Q. Were you treated any differently from other convicted
2 rapists who were serving less time in jail?

3 A. Convicted, how?

4 MR. LARKIN: Objection. Calls for speculation about
5 what someone else, somebody else's sentence might have been.

6 THE COURT: Were you treated any differently from
7 other convicted rapists who were serving time in jail.

8 Well, that's a yes or no.

9 MR. GARBER: Less time. Less time in jail.

10 THE COURT: All right.

11 Q. It's his --

12 THE COURT: Less time in jail, right.

13 MR. GARBER: Twenty years, coupled with the rape.

14 THE COURT: Right, so that's a yes or no question.
15 Yes or no, were you treated differently than other persons
16 convicted of rape --

17 THE WITNESS: Yes.

18 THE COURT: -- who -- were serving less time.

19 THE WITNESS: Yes.

20 THE COURT: And how were you treated differently?

21 THE WITNESS: Because, you know, 80 percent of the
22 rapists, I guess either a certain percentage of the rapists,
23 I'm not sure, plea bargain out and go to medium facility
24 prisons for shorter stints of time, or if they blew the trial.

25 MR. LARKIN: Objection. Objection. The witness is

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McCaffrey - direct

1 testifying to only maximum security prison. He was not in
2 medium security prison. I don't know that he has the
3 foundation to talk about what went on in medium security
4 prison.

5 THE COURT: Yeah, I mean I just want to know how you
6 were treated differently than rapists who were serving less
7 time.

8 THE WITNESS: Well, treated differently is if they are
9 guilty, they are going to act guilty. See, me, being not --
10 not guilty, I didn't act guilty. I went outside. I wouldn't
11 allow my pride to get in the way to where I wouldn't accept
12 that I'm a rapist. I wouldn't accept that the psychologist
13 wanted to tell me to accept my crime that I never committed, so
14 I could seek help and move forward. Or stay in my cell and not
15 come outside and then have people degrade me because, you know,
16 I'm afraid, or I'm going to act because I don't want to go
17 outside where I'd act like I'm guilty, because I can compare
18 myself to their crimes, in general.

19 Q. That's okay.

20 A. I don't want to --

21 Q. Are you saying you never sought counseling for being a
22 convicted rapist?

23 A. I had an initial interview in Downstate where the
24 psychologist told me I have to embrace my crime to move
25 forward. I told her I didn't commit my crime. She goes, yeah,

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McCaffrey - direct

1 well, you never --

2 Q. That's fine, you don't have to tell what other people said.

3 Now, you're a pretty big guy, right? How tall are
4 you?

5 A. 5'10" and a half.

6 Q. How much do you weigh?

7 A. Right now?

8 Q. Well, let's go back when you were in jail for that rape?

9 A. Well 225. I put on a couple of pounds.

10 Q. Well, didn't they think you were big enough to kind of take
11 care of yourself in a maximum security prison?

12 MR. LARKIN: Objection.

13 A. Yeah, well --

14 THE COURT: Yeah, I'm not -- sustained. Ask a
15 different question.

16 BY MR. GARBER:

17 Q. Were you ever preyed on by anybody?

18 MR. LARKIN: Objection.

19 A. All of the time.

20 MR. LARKIN: Objection, I mean --

21 THE COURT: All right, he has answered the question,
22 I'm going to allow that question.

23 What's the next question.

24 Q. Did you suffer from any emotional problems as a result of
25 your wrongful conviction in this case?

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McCaffrey - direct

1 A. Of course. I -- I'm -- every time I walk down my cell, I'm
2 worrying about somebody either stabbing me in my back, or
3 kicking me down a flight of steps, or treating me like, you
4 know I'm being threatened. They are: I'm going to get you,
5 raper. I don't want to say the explicit stuff. It is not
6 nice. This is not kindergarten. It's maximum security prison.
7 And with the dudes my size, I'm not no big guy there, you know
8 what I mean. There's guys, lifers, been there 15/20 years.
9 Only thing they do is eat well and work out. They make you
10 look like --

11 THE COURT: Let me interrupt you. Did you suffer any
12 emotional problems?

13 THE WITNESS: Oh, I --

14 THE COURT: While you were in prison.

15 THE WITNESS: I had sleeping problems. I -- I think
16 everybody is out to get me. Of course, nightmares. Worry
17 about my family constantly. They come to see me on visits and
18 I'm trying to pretend and make them think everything is okay.
19 On the phone, I gotta do the same thing, when things are not
20 okay, I'm in jail for rape. And I'm scared. And I want to
21 fight. And fight for my innocence. And I'm trying to keep
22 grip on the fact that, you know, I got 20 years in prison. My
23 thought process is scrambled, but I'm trying to stay focused.
24 I'm on the phone projecting like everything is okay. My sister
25 knows that it is not.

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McCaffrey - direct

1 Q. Did you ever --

2 A. I'm sorry.

3 Q. -- ever have any thoughts of suicide.

4 THE COURT: Start the question.

5 MR. GARBER: I'm asking another question.

6 Q. Any thoughts of suicide.

7 A. I'm first upstate, I'm in New York City, fighting still.

8 In Rikers, I'm around people still from the City here and
9 there. I could find people, either a friend of somebody I went
10 to school with that knew me or something, to the effect that
11 they could pedigree you in the real world and understand that
12 you are innocent, or something to that aspect.

13 MR. LARKIN: Objection, your Honor.

14 Q. Let me just --

15 MR. LARKIN: What was the question?

16 THE COURT: Sustained. I'm going to strike that part
17 of the answer. I know it is a very emotional thing, Mr.
18 McCaffrey. But try to just answer the questions.

19 And so did you have any thoughts about suicide while
20 you were in.

21 THE WITNESS: All of time.

22 THE COURT: All of the time. Next question.

23 Q. Wil, I'm going to tell you a story, but I'm going to break
24 it up, okay.

25 What about visits from your family, how far away were

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McCaffrey - direct

1 these prisons?

2 A. You know, in the beginning when I was in Sing Sing
3 Correctional Facility, I was getting frequent visits, three
4 times a weeks, you know.

5 THE COURT: Sing sing is how far away?

6 THE WITNESS: Forty-five minutes, your Honor.

7 Q. Okay. What about Five Points?

8 A. Five Points is six and a half hours away.

9 Q. And how --

10 A. Sporadic.

11 Q. -- did this have an impact on your family visits?

12 A. Of course it did. It had a tremendous impact on my
13 relationship with Ida. But my family would, you know, break it
14 up and go see me when they could. I couldn't see Ida maybe
15 more than once. It was that far. And travelling situations
16 was not there. And my family came when they could. And my
17 Aunt Rosey came a couple of times. My mom, I seen her one
18 time. My sister came once. They came when they was -- when it
19 was -- it was able. You know, money situations is hard enough.

20 Q. Okay. When did you get out?

21 A. September 1st, 2009.

22 Q. Tell the jury what you're emotional state, or what your
23 reaction was to being released from jail?

24 A. It was kind of, you know, I mean it is surreal, because I'm
25 happy that I'm going home and finally innocent. You know,

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McCaffrey - direct

1 which I was not -- I was just on bail. I had to wait months
2 before I was actually innocent in the Court's eyes. But, you
3 know, I went from being in the yard, in a maximum security
4 prison at 2:00 in the afternoon, to being free at 4:00 with no
5 kind of adjustment period to break back outside. And I went
6 from having my back on a wall around people that, you know,
7 they have that -- that kind of a time, 20 years, 25 years, to
8 being home in one week. You know, obviously, I was just so
9 happy just to be home. But then again, like it is just a hard
10 transition.

11 Q. Let's stop. Did you have trouble adjusting once you got
12 out?

13 A. Extremely.

14 Q. Do you have an alcohol problem?

15 A. Yes.

16 Q. Bad one?

17 A. I could say that now, yes.

18 Q. Well, how did you cope when you got out?

19 A. At first it started slowly, drinking sociably. And you
20 know, my family is there. And then as the alcohol progressed,
21 I pushed my family away after time. It was hard.

22 Q. Did you drink before you went in?

23 A. Socially.

24 Q. Did your drinking get worse after?

25 A. Yes.

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McCaffrey - direct

1 Q. Did you ever seek any psychological counseling?

2 MR. LARKIN: Objection, your Honor. The Court's
3 ruling on this.

4 MR. GARBER: It's yes or no.

5 THE COURT: I'm going to allow. You can answer yes or
6 no to that question.

7 A. I was evaluated, yes.

8 Q. Did you ever seek treatment?

9 A. No. I was -- it's hard to admit to strangers that you have
10 a problem or that you are struggling. I don't really talk to a
11 lot of -- I don't talk to strangers that much.

12 Q. Did anyone ever encourage you to get treatment?

13 A. Everyone. Including you.

14 Q. You wound up getting into trouble again, didn't you?

15 A. Yes.

16 Q. You got convicted of a weapon case?

17 A. Yes.

18 Q. An assault?

19 A. Yes.

20 Q. An aggravated unlicensed driving?

21 A. Yes. And I did all three of those.

22 Q. Did you plead guilty?

23 A. Yes.

24 Q. How long were you out for, before that came up?

25 A. I was out for four years. Well, three years and 10 months.

E4t0mcc5

McCaffrey - direct

1 Q. And where are you now?

2 A. I'm currently incarcerated.

3 THE COURT: Currently?

4 THE WITNESS: Currently incarcerated.

5 THE COURT: Incarcerated.

6 Q. Are you in a maximum security prison?

7 A. No. Classification is low/medium. I'm a in a medium
8 security prison.

9 Q. Is that rape charge still on your record?

10 A. Yeah. And I have to explain it every day, whether if I'm
11 in the street, or in jail, anywhere.

12 Q. Do you believe you had lasting psychological damage as a
13 result of your wrongful conviction in the rape case?

14 MR. LARKIN: Objection.

15 THE COURT: Sustained. I am not sure he -- to that
16 question, sustained.

17 Q. Are you suffering today?

18 A. I just recently figured out that there is something wrong.

19 MR. LARKIN: Same.

20 THE COURT: Overrule the objection, but.

21 All right, next question.

22 Q. Are you suffering today?

23 A. Yes.

24 Q. Did your family, or you, incur any legal expenses as a
25 result of your arrest and trial for that rape charge?

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McCaffrey - direct

1 A. Yes.

2 Q. Do you know how much money your family incurred, or you
3 incurred, for those legal costs?

4 MR. LARKIN: Objection. I think -- objection. I
5 think that's got to be proven up by documents, your Honor.

6 THE COURT: Overruled. You can answer.

7 A. Well, my family spent --

8 Q. Were there legal expenses?

9 A. They spent probably --

10 Q. If you know.

11 A. -- 10 to 15 thousand dollars for my first attorney,
12 attorney for trial purposes, between his fee. And private
13 investigators, when my family retained you, you know. Legal
14 fees was between probably like 20 to 25,000, between your fee
15 and private investigators until -- so about 45 grand, 45 to
16 \$45,000 until we ran out of money, and until we ran out of
17 financing capabilities. And you took the case pro bono.

18 MR. GARBER: I have no further questions.

19 THE COURT: No further questions. All right,
20 cross-examination.

21 MR. LARKIN: I think -- do we need a sidebar, just a
22 short sidebar?

23 THE COURT: I don't know, are you requesting one?

24 MR. LARKIN: Yes, I think just to be clear, I think
25 just a very short sidebar.

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McCaffrey - direct

1 THE COURT: All right.

2 Sorry, ladies and gentlemen. Very quick.

3 (Continued on next page)

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E4t0mcc5

McCaffrey - direct

1 (At the side bar)

2 THE COURT: Okay.

3 MR. LARKIN: I think it's clear, but I just -- I don't
4 want to run afoul of any of the Court's rulings in limine, but
5 I think the door has been opened to all cross-examination about
6 his entire criminal history, both before and after the
7 incident.

8 Counsel asked him to describe and to explain his
9 arrests prior to the rape charge. He had --

10 MR. GARBER: I concur.

11 MR. LARKIN: Okay, I just wanted to make sure.

12 THE COURT: Want to saying anything?

13 MR. COHEN: No.

14 THE COURT: Okay, all right.

15 (Continued on next page)

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E4t0mcc5

McCaffrey - direct

1 (In open court)

2 THE COURT: Okay. We almost ready, Mr. Larkin.

3 MR. LARKIN: Sorry.

4 CROSS-EXAMINATION

5 BY MR. LARKIN:

6 Q. Good afternoon, Mr. McCaffrey.

7 A. Good afternoon, Mr. Larkin.

8 Q. On July 30, last year, you were convicted of criminal
9 possession of a weapon in the second degree, correct?

10 A. Yes.

11 Q. And that's a felony, isn't it?

12 A. Yes.

13 Q. And on the same day, you were convicted of assault in the
14 second degree, weren't you?

15 A. Yes.

16 Q. That's also a felony, right?

17 A. Yes.

18 Q. And on the same day you pleaded guilty, you were convicted
19 of aggravated unlicensed operation of a motor vehicle, correct?

20 A. Yes.

21 Q. And that's another felony, right?

22 A. Yes.

23 Q. Each of those three felonies arose from three separate,
24 three separate indictments, right?

25 A. Yes.

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McCaffrey - cross

1 Q. And you pleaded guilty to three felonies arising out of
2 three separate incidents, right?

3 A. Yes.

4 Q. And you were sentenced on those felonies to the three and a
5 half years in state prison, correct.

6 A. Yes.

7 Q. And then with three and a half years of supervised release
8 afterward?

9 A. Yes.

10 Q. Correct?

11 A. Yes.

12 Q. Now, you talked about some of the instances, Mr. McCaffrey,
13 when you had been --

14 THE COURT: We're having trouble hearing. Move the
15 microphone closer. There is one on the table there.

16 Q. Mr. McCaffrey, in 1998, you were arrested in Suffolk County
17 and charged with assault, correct?

18 A. Yes.

19 Q. You stabbed somebody with a knife, isn't that true?

20 A. I pled guilty to assault three, misdemeanor.

21 Q. You stabbed somebody with a knife, didn't you, Mr.
22 McCaffrey?

23 A. Somebody got hurt during the altercation with a knife; yes.

24 Q. I'm sorry, your answer was?

25 A. I said yes.

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McCaffrey - cross

1 Q. Who did you stab?

2 A. I can't remember his name right now.

3 Q. Vincent Celli? Does that name ring a bell, Mr. McCaffrey?

4 A. Yes, it does.

5 Q. And you gave a statement to the police at the time, didn't
6 you?

7 A. Yes.

8 MR. GARBER: Objection.

9 BY MR. LARKIN:

10 Q. You --

11 THE COURT: Well, I'll allow the yes. I'm not sure
12 where we're going with this, though.

13 Q. You had an explanation on your direct examination for
14 happened, right?

15 A. Yes.

16 Q. And your explanation was that this person used to work for
17 you, right?

18 A. Yes.

19 Q. He came to your home and demanded money?

20 A. He came to my home, yes. Demanded money through the door.

21 Q. And you went outside and you had a knife with you, correct?

22 A. No.

23 Q. That's not correct?

24 A. I did not say that.

25 Q. Do you recall giving a statement to the police in

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McCaffrey - cross

1 connection with that?

2 A. It was 1998, I can barely remember.

3 Q. You don't remember?

4 THE COURT: He said he can barely remember, so go
5 ahead.

6 Q. I show you a document, Mr. McCaffrey.

7 MR. LARKIN: If I may give copy to your counsel,
8 entire file.

9 MR. GARBER: Objection.

10 THE COURT: To refresh.

11 MR. LARKIN: To refresh his recollection.

12 MR. GARBER: I don't know if he is saying will
13 something refresh your recollection. He says he has a vague
14 memory.

15 MR. LARKIN: He has a vague memory, so I have
16 something to --

17 THE COURT: The objection is overruled. There is not
18 a question pending at this point.

19 The last answer was "I can barely remember."

20 So what's the question?

21 Q. The question is, Mr. McCaffrey, I have a document here I
22 would like to show you to see if it refreshes your recollection
23 about a statement that you gave to the police.

24 MR. LARKIN: Why don't we mark it.

25 THE COURT: Mark it with a pen, and let's just get

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McCaffrey - cross

1 going.

2 MR. LARKIN: Let's mark it as double B.

3 THE COURT: Is it defense double B?

4 MR. LARKIN: Double B, I'm sorry, your Honor. May I
5 approach the witness?

6 THE COURT: You may, yes.

7 Q. Mr. McCaffrey, I'm going to show you what's been marked as
8 defendant double B, and ask you to take a look at it and tell
9 me if it refreshes your memory about a statement you gave to
10 the police after you were arrested in 1998 in Suffolk County.

11 A. I guess so, it was 16 years ago.

12 THE COURT: The only question is does it refresh your
13 recollection. As you read this now, does it trigger a memory
14 as to what statement you gave.

15 THE WITNESS: Yeah.

16 Q. Yes, you told the police that Mr. Celli had robbed you
17 prior to this incident; is that right?

18 A. He did.

19 Q. You told the police that he had stolen property from you,
20 correct?

21 A. Yes.

22 Q. Was Mr. Celli charged with a crime in connection with this
23 incident?

24 MR. GARBER: Objection.

25 A. No.

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McCaffrey - cross

1 THE COURT: Objection --

2 BY MR. LARKIN:

3 Q. You were charged with assault?

4 A. Are you trying --

5 THE COURT: -- overruled.

6 When I talk, everybody stops. I don't get to do much
7 at these trials, but when I talk everybody stops.

8 So the objection is overruled. Next question is what?

9 Q. Mr. Celli was not charged with a crime, and you were
10 charged with assault, correct, Mr. McCaffrey?

11 MR. GARBER: I have an objection to that.

12 THE COURT: Well, that's a compound question,
13 actually, but --

14 MR. LARKIN: I'm sorry, your Honor. I'll withdraw
15 that question.

16 Q. You were charged with a misdemeanor assault; correct?

17 A. Yes he pled guilty to misdemeanor assault.

18 Q. Actually, permit me to correct myself. You were charged
19 with a D felony, weren't you?

20 A. And I pled guilty to a misdemeanor assault.

21 (Continued on next page)

22

23

24

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McCaffrey - cross

1 Q. And you pled guilty to a misdemeanor assault and your
2 statement to the police about Mr. Chelly stealing property from
3 you was false, wasn't it?

4 A. It was false?

5 THE COURT: He is asking you was it false.

6 MR. GARBER: Objection.

7 A. It was true in my regards, it might have been unprovable at
8 the moment, but I told him what happened.

9 Q. You told the police he had previously in another incident
10 stolen property from you, correct?

11 A. What does this have to do with this case?

12 THE COURT: He asks the questions and you answer them
13 unless I tell you.

14 THE WITNESS: I am on trial for this -- I can't even
15 recall.

16 THE COURT: That is not the point. Answer the
17 question. If there is an objection and I sustain it, then you
18 don't have to answer it, otherwise, answer the question put to
19 you.

20 Q. You reported, as you said to the police, that Mr. Chelly
21 had stolen property from you prior to this incident?

22 A. Yes.

23 Q. And Mr. Chelly was never charged --

24 MR. GARBER: Objection.

25 THE COURT: Sustained.

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McCaffrey - cross

1 Q. Your statement to the police about Mr. Chelly robbing you
2 was false, wasn't it?

3 MR. GARBER: Objection. Asked and answered.

4 THE COURT: I think that the record is not clear as to
5 whether he answered that question.

6 Overruled. You can answer the question.

7 THE WITNESS: It was not false.

8 THE COURT: Next question.

9 Q. So you pled to a misdemeanor. You left his house, ran out
10 of the house with a knife, didn't you, Mr. McCaffrey?

11 A. The struggle proceeded down the driveway, yes.

12 Q. You had a knife in your possession as you walked down the
13 driveway, correct?

14 A. I can't recall at the moment. Got hurt in the house, and I
15 pled guilty for it.

16 Q. And you had a knife in your possession as you walked down
17 the driveway after?

18 A. I can't recall.

19 Q. Can't recall. Take a look at your statement, if you would,
20 the second page.

21 A. OK.

22 Q. Does the statement refresh your memory that you walked down
23 the driveway with a knife, slipped and fell and got up, took a
24 swing at him with the knife and cut him?

25 A. That's what the statement says, yes.

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McCaffrey - cross

1 Q. You have a recollection of doing that?

2 A. I don't recall. It was 16 years ago.

3 Q. You have no memory of the incident beyond what is --

4 A. I have --

5 THE COURT: Wait. Stop. Let him finish the question
6 before you start answering because the court reporter is going
7 to lose her mind and her fingers will fall off. It is a hard
8 thing, but everybody has to wait until the other side stops.
9 Wait for the question and wait for the answer to finish, Mr.
10 Larkin, before you ask the next question.

11 MR. GARBER: Objection. It is compound, covering two
12 areas what the statement said and what happened, I would ask
13 that the question be focused.

14 Objection to form.

15 THE COURT: Overruled, but I have forgotten what the
16 question was, so repeat it.

17 Q. You left your house with a knife, slipped and fell and
18 swung at Mr. Chelly with a knife and you stabbed him?

19 A. I pled guilty to what I could remember at the moment. I am
20 not denying anything happened. This is 16 years ago. I pled
21 guilty to misdemeanor assault.

22 Q. Aside from what appears in your statement, Mr. McCaffrey,
23 do you have any independent recollection of this incident?

24 A. I can't recall.

25 Q. You were sentenced to probation on the assault conviction,

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McCaffrey - cross

1 correct?

2 A. Yes.

3 Q. Two years' probation?

4 A. Yes.

5 Q. The next time that you were arrested was on August 3, 1999,
6 correct?

7 A. Can you refresh my memory?

8 THE COURT: You don't know that specific date?

9 THE WITNESS: No.

10 THE COURT: All right.

11 Q. You were charged with possession of marijuana, right?

12 A. I can't even recall.

13 Q. Cops arrested you. You said to the cops: It's only weed,
14 what's the big deal?

15 A. I can't recall.

16 Q. You have no memory at all?

17 A. If I pled guilty to it, I did it.

18 THE COURT: The question is if you have a
19 recollection.

20 THE WITNESS: I can't even recall, your Honor.

21 MR. LARKIN: Marked this, show a copy to counsel.

22 May I approach?

23 THE COURT: You don't have to ask.

24 Q. I am going to show you, Mr. McCaffrey, what we have marked
25 as Defendants' Exhibit CC. Tell me if it refreshes your memory

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McCaffrey - cross

1 about being arrested on August 3, 1999.

2 A. Not at all. I can't recall.

3 Q. Your date of birth appears on the court file, right?

4 A. Yes.

5 MR. GARBER: Objection.

6 Q. And that's your NYSSID number on the court file?

7 A. I don't know what you are saying --

8 THE COURT: I am not sure that we need to get into all
9 of this, so sustained.

10 Q. You were arrested in Suffolk County in the year 2000,
11 February 2000 and you were charged with aggravated unlicensed
12 operation of a motor vehicle, weren't you?

13 A. Probably.

14 Q. Do you have a memory of being arrested sometime in February
15 of 2000, being charged --

16 A. I probably --

17 THE COURT: We are doing this again. Just be careful
18 not to answer before the question. In real life, we often talk
19 over each other. It is common, but in a courtroom we can't.
20 So try to make sure you wait for the answer to finish before
21 you ask the question and wait for the question before the
22 question.

23 Re-ask the question.

24 Q. Do you have a memory of being charged with aggravated
25 unlicensed operation of a motor vehicle in February of 2000 in

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McCaffrey - cross

1 Suffolk County?

2 A. Vaguely.

3 Q. You pled guilty to that offense, right?

4 A. I've been arrested a couple of times driving without a
5 license. Yes, if he says -- I can't pinpoint the exact time.

6 Q. You were taken in custody and you were held for what,
7 overnight, do you have a memory?

8 A. Probably.

9 Q. Probably held overnight?

10 A. Yes.

11 Q. And you paid a fine, correct?

12 A. Yes.

13 THE COURT: Don't mind what he says. Do you have a
14 recollection?

15 THE WITNESS: I paid a bunch of fines, your Honor.

16 THE COURT: So only talk about what you remember.

17 Q. If I may, Mr. McCaffrey, I am going to show you what has
18 been marked as Defendants' DD and ask you the same question.
19 Does that document refresh your memory about the plea you
20 entered to the charge of aggravated unlicensed operation of a
21 motor vehicle -- the plea was in 2001, correct?

22 A. Yes, I pled guilty.

23 Q. And you paid a fine, right?

24 A. Yes.

25 Q. And the sentence was really time served in terms of being

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McCaffrey - cross

1 put in prison, right?

2 A. I thought that the sentence was the fine. That's what it
3 says. I pled guilty.

4 Q. Does the document refresh your memory that your
5 imprisonment --

6 A. Time served, yes.

7 Q. Do you remember how long the time was --

8 A. No.

9 Q. The next time that you were arrested, Mr. McCaffrey, was on
10 June 25 of 2000, correct?

11 THE COURT: Do you recall that specific date?

12 THE WITNESS: No.

13 Q. Don't recall that?

14 A. It was 14 years ago.

15 Q. Mr. McCaffrey, I am going to show you what we marked as EE
16 for identification?

17 THE COURT: Defendants' EE?

18 Q. I'm going to ask you to take a look at it and ask if it
19 refreshes your memory about being arrested on or about June 25,
20 2000.

21 A. OK.

22 THE COURT: Does looking at that trigger an
23 independent memory on your part that, yes, you were charged
24 with that? That's really the question.

25 THE WITNESS: Yes.

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McCaffrey - cross

1 Q. Did you know somebody at the time named Patrick Collins?

2 A. No.

3 Q. Did you ever say to Patrick Collins, in words or in
4 substance, I know where you live, I'm going to kick your ass?

5 A. No.

6 Q. Were you charged with misdemeanor assault on this occasion?

7 A. That's what it he says, yes.

8 Q. Do you remember being charged with misdemeanor assault?

9 A. I actually do, yes.

10 Q. In connection with an incident involving Mr. Patrick
11 Collins?

12 A. Yes.

13 Q. What did you do to him?

14 A. They said I was screeching tires and he came out and
15 smacked the pizza out of my hand. I pled guilty. I must have
16 did it.

17 Q. He smacked the pizza out of your hand?

18 A. Yeah.

19 Q. And then you pleaded guilty to assault because he slapped
20 the pizza out of your hand?

21 A. Yes. That's what I recall, misdemeanor assault.

22 THE COURT: Did you say something about --

23 THE WITNESS: I can't even remember this, vaguely.

24 Q. Do you remember getting into a fight with Mr. Collins?

25 A. No. I didn't get into a fight with anyone.

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McCaffrey - cross

1 Q. The court in this case entered an order of protection,
2 isn't that right, Mr. McCaffrey?

3 MR. GARBER: Objection.

4 THE COURT: Go ahead.

5 A. Yes.

6 Q. And the order of protection was against you, wasn't it?

7 A. Yes.

8 Q. And it was in favor of Mr. Collins, right?

9 MR. GARBER: Objection.

10 A. Yes.

11 Q. And the order instructed you to stay away from him, isn't
12 that right?

13 Yes, Mr. McCaffrey, I'm sorry?

14 THE COURT: Is that correct?

15 THE WITNESS: I was reading this.

16 What was the question?

17 Q. The order of protection directed you to stay away from
18 Patrick Collins, isn't that right?

19 A. Yes.

20 Q. There was not any order of protection entered against
21 Patrick Collins directing him to stay away from you, was
22 there.?

23 MR. GARBER: Objection.

24 THE COURT: Sustained.

25 Q. To your memory, was there an order of protection --

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McCaffrey - cross

1 THE COURT: I sustained that objection.

2 Next question.

3 Q. You pled guilty to another misdemeanor assault, correct?

4 THE COURT: When?

5 A. I have a couple of --

6 Q. On or about February 13 of 2001, you pleaded guilty to a
7 misdemeanor assault in connection with this arrest?

8 A. In connection with this arrest?

9 Q. Yes.

10 A. I can't say. I guess I did.

11 Q. Do you recall what the sentence was?

12 A. No.

13 Q. It was time served?

14 A. I don't recall the sentence.

15 Q. I'm sorry. It was a conditional discharge and a one year
16 order of protection, correct?

17 A. If that's what it says, I really don't remember.

18 THE COURT: Just say what you remember.

19 Next question.

20 Q. The next occasion when you were arrested, Mr. McCaffrey,
21 was October 31 of 2000, is that right?

22 A. Yes.

23 Q. This involved Mr. Collins again, correct?

24 A. It involved Mr. Collins again? I have no idea.

25 Q. You don't have a recollection of another incident in

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McCaffrey - cross

1 October of 2000 involving Mr. Collins, Patrick Collins?

2 A. No. How would I know?

3 Q. Permit me then to show you if, I may, and I'm going to mark
4 this FF. Take a moment. Look at that document. Tell me if it
5 refreshes your memory about an arrest in October of 2000
6 arising out of another incident involving Mr. Collins.

7 A. I didn't even know Mr. Collins. This is an incident that I
8 explained on Halloween when resisting arrest explained to the
9 jury before. I didn't even know that involved that officer.

10 Q. Mr. Collins is not a police officer, right?

11 A. I don't even know who he is. I am trying to get a grip on
12 what the last thing, I don't remember --

13 Q. You recall --

14 THE COURT: You have to let him finish his answer.

15 A. You have to understand the last case was. I am not
16 laughing at the situation. I just don't understand -- I didn't
17 have a chance to read it.

18 THE COURT: Do you recall Mr. Collins being involved
19 in this Halloween incident?

20 THE WITNESS: No.

21 THE COURT: Do you recall the person in the Halloween
22 incident being the same person being involved in the prior
23 incident?

24 THE WITNESS: No, your Honor.

25 Q. In the Halloween incident, Mr. McCaffrey, a police officer

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McCaffrey - cross

1 ended up going to the hospital, right?

2 THE COURT: The question --

3 A. I assume so, yeah.

4 Q. Police officer had a dislocated shoulder, isn't that right?

5 A. If that's what he said he had, yes.

6 Q. You pled guilty to resisting arrest, isn't that right?

7 A. Yes, misdemeanor, resisting arrest.

8 Q. The next time that you were arrested, Mr. McCaffrey, was in
9 February -- excuse me -- May of 2001, is that right?

10 A. Yes.

11 Q. That was possession of marijuana?

12 A. Yes. Probably, yes.

13 Q. Probably was -- you pled to this disorderly conduct?

14 A. I don't recall, but I am agreeing, yes.

15 THE COURT: Just say what you remember. That's all.
16 Don't worry about what he is asking or why he is asking. You
17 just answer if you remember. You don't remember, that's fine
18 to say I don't remember.

19 THE WITNESS: I just don't want to seem like I am
20 denying.

21 THE COURT: All that you can do is testify about what
22 you remember. The question is do you remember, just say you
23 don't remember, OK.

24 THE WITNESS: Yes.

25 THE COURT: So what is the question?

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McCaffrey - cross

1 Q. Now, we are up to May of 2001. Sometime in 2002, you
2 violated the terms of your probation, isn't that right?

3 A. Yes.

4 Q. That's when you went to Rikers Island for four months?

5 A. Yes.

6 Q. That was July until about November of 2002, approximately?

7 A. Yeah.

8 Q. Then in or about April of 2003 you were arrested in Oneida
9 County, were you not?

10 A. Yes.

11 Q. And that was a DWI that you described earlier?

12 A. Yes, a DUI.

13 Q. You said that your blood alcohol was .09?

14 A. Yes.

15 Q. Blood alcohol was .15, wasn't it?

16 A. He said that it was .09. I remember the case, that's why I
17 remember the number.

18 Q. Let me show you Defendants' GG, if I may, Mr. McCaffrey.
19 And I am going to ask you to take a look, if you would, to the
20 second page.

21 THE COURT: Take a look at what he is showing you, the
22 second page.

23 The second page, right?.

24 MR. LARKIN: Yes, your Honor.

25 Q. Take a look, if you would, under the heading of Count 2 and

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McCaffrey - cross

1 read that to yourself and let me know if it refreshes your
2 memory that your blood alcohol was .15 at the time.

3 (Pause)

4 A. This doesn't say I have .15 --

5 THE COURT: Wait. I don't care what it say. This is
6 not in evidence. You just read it, and if it refreshes your
7 recollection, if reading that makes you say, oh, I remember
8 something, then say so. If it doesn't, just say it doesn't.

9 THE WITNESS: Your Honor, he is asking me a question
10 that don't pertain to this.

11 THE COURT: He is just asking you if this refreshes
12 your recollection about your blood alcohol being higher than --

13 THE WITNESS: Can I ask a question?

14 THE COURT: No. You just have to answer it.

15 Does that refresh your recollection?

16 THE WITNESS: No.

17 THE COURT: Next question.

18 Q. Do you recall pleading guilty to DWI in New Hartford town
19 court?

20 A. I pled guilty to DUI, yes.

21 Q. You pled guilty and you paid a fine, right?

22 A. Yes.

23 Q. The next time that you were arrested was September 15 of
24 2003, right?

25 A. I don't recall.

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McCaffrey - cross

1 Q. That was when you pled to theft of services, right?

2 A. Oh, yes.

3 Q. You refused to pay a cab fare?

4 A. I explained that to the jury, yes.

5 Q. You basically hailed a cab and tried to avoid paying the
6 fare, didn't you?

7 A. Without denying what I did, I explained it, but that's what
8 I pled guilty to.

9 Q. And that was five days in Bronx House of Detention?

10 A. I thought I just paid the fine.

11 Q. I show you what is marked as HH. Look at it, if you don't
12 mind. Tell me if it refreshes your memory that you paid a fine
13 and you went to jail for five days for that?

14 A. Yes.

15 Q. Now, the next time you got arrested was on November 11th of
16 2003, correct?

17 A. Yes.

18 Q. And that was an incident in the store, right?

19 A. Yes.

20 Q. And you pled guilty to a misdemeanor assault, isn't that
21 true?

22 A. Yes.

23 Q. Punched a minor child in the head, didn't you?

24 A. He was 17, I was mistaken that he was an adult but, yes,
25 sir, I pled guilty.

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McCaffrey - cross

1 Q. And the court entered an order of protection against you in
2 favor of the minor child, correct?

3 A. Yes.

4 Q. And you pled guilty to that crime because you were guilty,
5 isn't that true?

6 A. Yes.

7 Q. You lost some money in a pay phone in the store, isn't that
8 right?

9 A. Yes.

10 Q. After that happened, you started trashing the place,
11 pulling stuff off of the shelves?

12 A. I don't recall what happened, but there was a situation in
13 the store, yes. The payphone was inside the store, yes.

14 Q. The store owner called the police, you got arrested and you
15 pled to the misdemeanor assault?

16 A. Yes.

17 MR. GARBER: Objection.

18 Q. You pled to --

19 MR. GARBER: Is he giving an narrative or ask
20 questioned.

21 THE COURT: No. It is cross-examination, so
22 overruled?

23 A. I pled guilty to everything that you are asking me for.

24 Q. Resisting arrest?

25 A. What they arrested me for, I pled guilty. It was a local

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McCaffrey - cross

1 store. I felt bad and wanted to take responsibility, so I pled
2 guilty.

3 Q. Let me just show you what we have marked as Exhibit II.

4 If you would, sir, look at the first page.

5 Does the first page of this document refresh your
6 memory that you pled guilty to, among other things, resisting
7 arrest and a misdemeanor assault?

8 A. Yeah. I pled guilty to everything you said.

9 Q. The next time that you were arrested was May 14 of 2005,
10 correct?

11 A. Yes.

12 Q. And that was just possession of marijuana, right?

13 A. Yes.

14 Q. You got a conditional discharge -- you pled, right?

15 A. Yes.

16 Q. You pled guilty?

17 A. Yes.

18 Q. Did you serve any time in connection with that arrest?

19 A. Most likely two days.

20 Q. That is May 2005, and thereafter you were arrested in
21 September in connection with this incident, right?

22 A. Wrongfully accused of rape, yes.

23 Q. After you were arrested in June of 2000, in June of 2000,
24 you threatened the complaining witness, didn't you? You
25 resisted arrest?

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McCaffrey - cross

1 A. What case is that?

2 Q. That is the case involving Mr. Collins.

3 A. I don't really recall that case.

4 Q. You remember Mr. Collins, though, right?

5 You remember him knocking a pizza out of your hand,
6 right?

7 A. I remember somebody knocking it out -- I don't remember it
8 being Mr. Collins.

9 Q. You remember somebody knocking a pizza out of your hand and
10 you pleaded guilty to assault after that incident?

11 A. Because after they questioned me about car screeching their
12 tires, seeing me exit the vehicle, I remember they smacked the
13 pizza, and I resisted arrest and I pled guilty.

14 Q. You didn't go to court on a number of occasions in that
15 case?

16 A. It is hard for me to come. So when I was not able to go to
17 court I returned the next day and explained it to the judge and
18 the judge understand.

19 Q. You know what it means to warrant in a criminal case,
20 right?

21 A. Yes.

22 Q. What does it mean?

23 A. It means you did not go to court.

24 Q. So when you got a pending case, you got a series of dates
25 when you are supposed to be there to address the charges, isn't

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McCaffrey - cross

1 that right?

2 A. Yes.

3 Q. And the courts will tell you to come back in 30 days and we
4 will address your case?

5 A. Yes.

6 Q. If the case doesn't get resolved, isn't that right?

7 A. Yes.

8 Q. If you don't come back when you are supposed to, they issue
9 a bench warrant for your arrest?

10 A. Yes.

11 Q. To warrant, that means when you don't show up your court
12 dates?

13 A. I said yes, agreed the first time.

14 Q. You warranted a bunch of times -- you just didn't show up
15 for court?

16 THE COURT: We have a break for 3:30. Let's take our
17 afternoon break.

18 Don't discuss the case, ladies and gentlemen. Keep an
19 open mind.

20 Enjoy whatever treats are back there, if they are not
21 up to your liking, blame Mr. Deluzio.

22 All rise for the jury.

23
24 (Continued on next page)

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McCaffrey - cross

1 (Jury not present)

2 THE COURT: Mr. Larkin, how much more do you think
3 that you have?

4 MR. LARKIN: At least 45 minutes.

5 THE COURT: Then some redirect, I imagine?

6 MR. GARBER: Yes. I don't think it will be long.

7 THE COURT: Then we will start Ms. Pujols.

8 MR. GARBER: I guess that I will tell her, she is out
9 there.

10 THE COURT: Why don't we take a short break, just five
11 minutes or so. Try to get as much as we can done today. I
12 definitely want to start Ms. Pujols.

13 (Recess)

14 Let's get the jury.

15
16 (Continued on next page)

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McCaffrey - cross

1 (Jury present)

2 THE COURT: We will resume with the cross-examination
3 of Mr. McCaffrey by Mr. Larkin.

4 Mr. Larkin, you may proceed.

5 BY MR. LARKIN:

6 Q. We want to go back to January 30, 1998. This is after the
7 Suffolk County incident where you pled to a misdemeanor
8 assault. Do you recall being arrested in the Bronx on that
9 date?

10 A. No.

11 Q. Do you recall being charged with crimes related to your
12 attempt to break into a 1996 Acura Legend?

13 A. Yes.

14 Q. Do you recall that you pled guilty to -- you were permitted
15 to plead guilty to disorderly conduct at that time?

16 MR. GARBER: Objection.

17 THE COURT: Overruled.

18 A. Yes. I pled guilty to disorderly conduct.

19 Q. It was conditional discharge and you had to make
20 restitution to the victims, isn't that right?

21 A. I don't remember the restitution part, but I do remember
22 pleading guilty to disorderly conduct.

23 Q. I am going to show you what is marked as Defendants' JJ.
24 Take a look at the first page, if you would.

25 Does the first page of Exhibit JJ refresh your memory

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McCaffrey - cross

1 that you were directed to make restitution to the victims?

2 A. Yes.

3 Q. In the amount of \$375?

4 A. Yes.

5 Q. An order of protection was entered against you in this
6 case, isn't that right?

7 A. I'm not sure.

8 Q. Take a look at the third page of the Exhibit JJ if you
9 would.

10 Does the third page refresh your memory that an order
11 of protection was entered against you in favor of two
12 complaining witnesses in or about November of 1998?

13 A. Yes.

14 Q. Did you follow the order of protection going forward -- you
15 didn't bother those people again, did you?

16 A. I didn't even bother the people to begin with, but yes.

17 Q. You tried to steal their car, didn't you?

18 A. No. I was actually riding a motorcycle through the same
19 area that somebody else did. I pled guilty because I wanted to
20 resolve the case with --

21 Q. So you didn't plead guilty because you were guilty --
22 somebody else tried to break into their car and you just wanted
23 to get the case over with?

24 A. In this matter, yes.

25 Q. In that instance?

E4TUMCC6

McCaffrey - cross

1 A. Yes.

2 Q. You agreed to the order of protection as part of your
3 guilty plea, right?

4 A. Yes.

5 Q. In connection with the other incident that we spoke about
6 earlier, the incident involving the minor child, you recall
7 that, right?

8 A. Yes.

9 Q. The order of protection was entered against you and in
10 favor of the minor child, right?

11 That was the bodega owner's son.

12 A. Yes.

13 Q. Did you follow that order of protection?

14 A. Yes.

15 Q. You left the kid alone after that, right?

16 A. Yes.

17 Q. Now, in November of 2009, Mr. McCaffrey, do you recall
18 being arrested and charged with aggravated unlicensed operation
19 of a motor vehicle?

20 A. Yes.

21 Q. And you pled to that, right?

22 A. Yes.

23 Q. Did you pay a fine?

24 A. I'm not sure if I did or not, presumably, yeah.

25 Q. Let me show you Exhibit KK. Look at the first page. Tell

E4TUMCC6

McCaffrey - cross

1 me if you had to pay a fine on that occasion?

2 A. Yes. \$200.

3 Q. Did you pay a fine?

4 A. I'm not sure. I must have.

5 Q. Not sure?

6 A. I'm not sure. I may I have.

7 Q. Do you have any current outstanding fine?

8 A. I'm not sure. Possibly.

9 Q. You don't know?

10 A. No.

11 Q. The next time that you were arrested Mr. McCaffrey was
12 November 7th of 2010, correct?

13 A. Yes.

14 Q. You were arrested in a public housing project, weren't you?

15 A. Yes.

16 Q. You were in a public housing building that you didn't live
17 in, right?

18 A. Yes.

19 Q. You refused to answer a police officer's questions about
20 why you were there, isn't that right?

21 A. I was walking through the project.

22 Q. Let me try it one more time.

23 You refused to answer a police officer's questions
24 about why you were in that building, isn't that right?

25 A. I don't remember not answering his questions, I was charged

E4TUMCC6

McCaffrey - cross

1 with trespassing, yes.

2 Q. Let me show you what is marked as Exhibit LL.

3 And I'm going to ask you if you would, sir, to take a
4 look at the fourth page of that file, of that document. Read
5 it to yourself, if you would?

6 A. It says that I trespass.

7 Q. Does the document refresh your recollection that --

8 A. I would, I --

9 Q. -- a police officer asked you what you were doing in the
10 building and you refused to provide an answer?

11 A. I don't remember that part. I remember being in the
12 building and he arrested me for trespassing because I didn't
13 live there.

14 Q. Did the police officer ask you any questions when he saw
15 you in the building?

16 A. He asked if I had ID, did I live here, I said no.

17 Q. He then arrested you for trespass?

18 A. Yes.

19 Q. And that's what happened?

20 A. Yes.

21 Q. You didn't refuse to answer any of his questions?

22 A. I can't recall. I pled guilty to trespassing. I can't
23 recall.

24 MR. GARBBER: Objection. Technically, he doesn't have
25 to answer questions. I'm not sure that can't be the basis for

E4TUMCC6

McCaffrey - cross

1 a charge.

2 THE COURT: He can't recall the facts. I think that's
3 the answer.

4 Next question.

5 Q. Mr. McCaffrey, that is, after the November 2010 arrest, you
6 were arrested in May of 2011. Isn't that right?

7 A. Yes.

8 Q. And that led to your guilty plea to aggravated unlawful
9 operation of a motor vehicle, right?

10 A. Yes.

11 Q. You were also arrested on June 6, 2011 in the Bronx,
12 weren't you?

13 A. I can't recall.

14 Q. Do you recall giving a deposition in this case?

15 A. Yes.

16 Q. You came to our offices and you were asked questions about
17 your claims, right?

18 A. Yes.

19 Q. And you were under oath at the time, right?

20 A. Yes.

21 Q. And you understood what the oath to tell the truth meant at
22 that time, didn't you?

23 A. Yes.

24 Q. You were required to tell the truth, nothing but the truth,
25 correct?

E4TUMCC6

McCaffrey - cross

1 A. Yes.

2 Q. Reading from your deposition, this is page 22, line 21:

3 "Q Prior to the first week in March, were you arrested on
4 June 6, 2011 to your recollection?

5 "A Yes, thereabouts."

6 Were you asked that question and did you give that
7 answer?

8 A. Yes.

9 Q. Were you in fact arrested on June 6, 2011?

10 A. Ye, I was just confused with the date. I am still not
11 sure.

12 Q. Were you detained for a period of time after you were
13 arrested?

14 A. Could you refresh my memory what I was arrested for?

15 Q. What were you arrested for, I don't know. In this
16 particular instance, what were you arrested for?

17 A. I don't recall.

18 MR. GARBER: I would just object to impeachment on or
19 about -- this line should be restricken.

20 MR. LARKIN: I will reread the question.

21 THE COURT: Do you recall this arrest?

22 THE WITNESS: No, your Honor.

23 THE COURT: He doesn't recall the arrest.

24 Q. Well, at the time of your deposition, the case was still
25 pending isn't that right?

E4TUMCC6

McCaffrey - cross

1 A. I can't recall.

2 Q. Reading from your deposition, page 23, line 1:

3 "Q Is that case still pending" --

4 MR. GARBER: Judge, if this is a refreshment of
5 recollection, he should show the document.

6 THE COURT: I don't think it is being offered to
7 refresh.

8 Overruled.

9 Q. Were you asked that question and did you give that answer?

10 THE COURT: If you remember.

11 THE WITNESS: If I could see --

12 THE COURT: Do you remember saying that at the
13 deposition?

14 THE WITNESS: Not specifically, no.

15 THE COURT: Next question.

16 Q. The next time that you were arrested was on March 6, 2012,
17 isn't that right?

18 A. Yes.

19 Q. On that occasion, you were charged with second degree
20 assault?

21 A. Yes.

22 Q. You chased somebody into the building, right?

23 A. I can't recall the specifics but there was a fight and I
24 pled guilty to assault, yes.

25 Q. Other than there being a fight and you pleading guilty to

E4TUMCC6

McCaffrey - cross

1 assault, you don't remember any specifics about the incident
2 that happened a little bit more than two years ago that led to
3 your arrest and your plea for second degree assault?

4 A. There were two sides to the story. I admitted to what I
5 did, so I pled guilty to it.

6 Q. You chased somebody into a building and you had a gun,
7 isn't that right?

8 A. That's what he said. That wasn't what happened. I pled
9 guilty to what I did.

10 Q. You hit him with the gun, right?

11 A. No.

12 Q. You fired the gun at him, didn't you?

13 A. Absolutely not.

14 Q. You chased him into a building and you hit him with some
15 object?

16 A. Absolutely not. I had a fight with him.

17 Q. Did the other individual who you had this fight with get
18 charged with a crime?

19 A. No.

20 Q. You got charged with a crime, right?

21 A. Yes.

22 Q. You admitted to assault too, right?

23 A. Yes.

24 Q. And that's a D felony, isn't it?

25 A. Yes.

E4TUMCC6

McCaffrey - cross

1 Q. And you were sentenced to one year in prison, right?

2 A. Yes.

3 Q. And then the next time you got arrested was in May of 2012
4 on May 1, isn't that true?

5 A. Yes.

6 Q. On that occasion you were charged with criminal possession
7 of a weapon, isn't that right?

8 A. Yes.

9 Q. You pled to criminal possession of a weapon, right?

10 A. Yes.

11 Q. When you were arrested, you made statements to the police,
12 didn't you?

13 A. No.

14 MR. LARKIN: Can we have a sidebar briefly, your
15 Honor?

16 THE COURT: Very briefly.

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18 (Continued on next page)
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E4TUMCC6

McCaffrey - cross

1 (At the sidebar)

2 MR. LARKIN: I am want to be sure that we are not
3 overstepping. We had made a motion in limine and your Honor
4 excluded those statements and I thought that the door was
5 opened when he was examined --

6 THE COURT: I think that the door was opened because
7 Mr. Garber asked: Tell everything about your criminal history.
8 And the plaintiff characterized it. And I think that you can
9 then explore with him whether he undersold it or misstated or
10 mischaracterized what his criminal history is. So I think that
11 is fair, but I am not sure why his statements following the
12 arrest are impeaching anything or whether they are relevant.

13 MR. LARKIN: I think it reflects an attitude about law
14 enforcement.

15 THE COURT: He might be justified in having contempt
16 for law enforcement.

17 MR. GARBER: Technically, he denied. He made the
18 statement --

19 THE COURT: He didn't say that he lacks recollection.
20 He didn't say it, so the issue is he shouldn't be impeached on
21 it.

22 This is really peripheral. I am not going to revisit
23 my ruling, the fact of the conviction is in and I think that
24 you should probably move on.

25 (Continued on next page)

E4TUMCC6

McCaffrey - cross

1 (In open court)

2 BY MR. LARKIN:

3 Q. Mr. McCaffrey, you are currently housed at the Orleans
4 Correctional Facility?

5 A. Yes.

6 Q. How far away is that?

7 A. Nine hours.

8 Q. And your earliest release date is July 2016, right?

9 A. Yes.

10 Q. Now, turning to the day of the incident involving
11 Ms. Peguero, you went out on September 18, 2005 with three
12 other individuals, right?

13 A. Yes.

14 Q. And that is Peter Adorno, Raymond Uribe and Carlos Vargas,
15 correct?

16 A. Yes.

17 Q. And Mr. Uribe had a nickname, right?

18 A. Polo.

19 Q. Like P-O-L-O?

20 A. Yes.

21 Q. And you had known Mr. Uribe for a few years, correct?

22 A. I know them through a mutual friend, yes.

23 Q. You used to work for him?

24 A. Work for him?

25 Q. For Mr. Uribe?

E4TUMCC6

McCaffrey - cross

1 A. No.

2 Q. Do you remember testifying before the grand jury that
3 investigated Ms. Peguero's allegations of rape?

4 MR. GARBER: Objection. It is not true -- no, no, I
5 withdraw the objection.

6 THE COURT: Overruled.

7 Go ahead.

8 Restate the question.

9 Q. You recall testifying in the grand jury?

10 A. Yes, I put some carpet in for him a couple of times.
11 That's it.

12 Q. If I may, Mr. McCaffrey, after you were arrested, there was
13 a grand jury convened to look into the allegations of rape,
14 isn't that true?

15 A. Yes.

16 Q. And you testified before that grand jury, correct?

17 A. Yes.

18 Q. Reading from page 70, line 7:

19 "Q How do you know him" -- referring to Mr. Uribe?

20 MR. GARBER: Objection.

21 THE COURT: Stop. What is the objection?

22 MR. GARBER: He has actually already asked his
23 question. It is not impeachment anymore. I believe that he
24 said he worked for him as a contractor.

25 THE WITNESS: Yes, like work for a company.

E4TUMCC6

McCaffrey - cross

1 MR. GARBER: He has refreshed his recollection,
2 essentially, and the landscape has changed in the last minute.

3 THE COURT: Maybe 15 seconds.

4 So you do recall working for him?

5 THE WITNESS: I put some carpet in for him a couple of
6 times. I don't know if that defined work -- not work for him,
7 payroll or nothing.

8 THE COURT: He paid you?

9 THE WITNESS: Yes, in cash on the side, just to put
10 carpet in.

11 Q. You did some work for him, that's how you knew Mr. Uribe?

12 A. Yes.

13 THE COURT: Is that how you knew him or you knew him
14 some other way?

15 THE WITNESS: I knew through a mutual friend. I did
16 work for him.

17 Q. And your nickname is Tank, you told us, right?

18 A. Yes.

19 Q. And Carlos Vargas, he had a nickname too?

20 A. Yes.

21 Q. That was Cuba?

22 A. Cupa?

23 Q. Like C-U-B-A?

24 A. No, like Cupa.

25 Q. Cooper?

E4TUMCC6

McCaffrey - cross

1 A. It is my accent. It sounds weird.

2 Q. You guys all went to X Bar on Fordham Road that night,
3 right?

4 A. Yes.

5 Q. When you went to X Bar, you were driving a Mercedes, is
6 that true?

7 A. Yes.

8 Q. Before you went out that night, Mr. Vargas picked you up in
9 a minivan, right?

10 A. Yes.

11 Q. Before you went to the X Bar, you changed the minivan for
12 Mr. Uribe's Mercedes, right?

13 A. Yes.

14 Q. So you got out of the minivan and everybody got into the
15 Mercedes, right?

16 A. Yes.

17 Q. And everybody went to the X Bar?

18 A. Yes.

19 Q. And you parked the minivan in a parking garage?

20 A. Yes.

21 Q. And you stayed at X Bar until it closed, that was about
22 until about 4 a.m.?

23 A. Yes.

24 Q. Then you left and you went to Broadway and Dyckman to that
25 area, right?

E4TUMCC6

McCaffrey - cross

1 A. Yes. I testified to all of this before.

2 THE COURT: Just answer the questions, OK.

3 THE WITNESS: Yes.

4 Q. You knew that area around Dyckman pretty well, didn't you,
5 at the time?

6 A. I know the area, yes.

7 Q. There were a lot of clubs?

8 You knew there were a lot of the clubs in that area,
9 right?

10 A. Dyckman, it is a lot of everything.

11 Q. But you knew there were a lot of clubs in that area, right?

12 A. Not specifically, no.

13 Q. Do you remember testifying at the criminal trial in this
14 case, right?

15 A. Yes.

16 Q. We read some of your testimony earlier, right Mr.
17 McCaffrey?

18 A. Yes.

19 Q. And you were here when the testimony was read, right?

20 A. Yes.

21 Q. And the testimony, to your knowledge, was accurate, wasn't
22 it?

23 A. Yes.

24 Q. You told the truth when you testified at the criminal
25 trial, right?

E4TUMCC6

McCaffrey - cross

1 THE COURT: Did you hear the question?

2 Q. Did you tell the truth?

3 A. Yes.

4 Q. Page 520, line 14:

5 "Q When you get to the parking lot, I want you to face the
6 jury and tell them everything that you know that occurred that
7 evening which occurrence brought you here.

8 "A After we dropped the car and we went in the Mercedes to X
9 Bar, it's on the Fordham Road right off the Deegan, we left
10 there about 4:30, 4:45 heading to toward the Dyckman area
11 where, you know, it is an area of clubs over there."

12 Were you asked that question? Did you given that
13 answer?

14 A. Yes. The question was in reference about the clubs you
15 just asked me.

16 Q. Were you asked that question?

17 THE COURT: Whoa.

18 MR. GARBER: I object. And ask that it be stricken.
19 The purpose of this question is to show that he knows that
20 there are clubs in the area.

21 THE COURT: The objection is overruled.

22 If you ask me a question about you are on trial, I
23 will start explaining why he is being allowed to ask these
24 questions. I really don't want to have to do that. All that I
25 want is any witness just answer the questions put to them and

E4TUMCC6

McCaffrey - cross

1 if there is an objection to stop and then I will rule on the
2 objection.

3 THE WITNESS: All right.

4 THE COURT: What is the question?

5 Q. Were you asked that question and did you give that answer?

6 A. I can't recall.

7 Q. You recall the rest of your testimony as truthful, but that
8 specific question and answer you can't recall whether you were
9 asked that question and gave that answer?

10 MR. GARBER: Objection to form.

11 THE COURT: What is the question again? I didn't hear
12 the question.

13 Page 520 page 14.

14 "Q When you get to the parking lot, I want you to face the
15 jury and tell them everything that you know of that occurred
16 that evening which occurrence brought you here now.

17 "A After we dropped off the car and we went in the Mercedes
18 to X Bar, it's on Fordham Road right off the Deegan, we left
19 there about 4:30, 4:45 heading towards the Dyckman area where,
20 you know, it is an area of clubs over there."

21 Were you asked that question, and did you give that
22 answer?

23 A. I assume so. I don't remember the question being asked.

24 Q. Is it fair to say that you knew that there were clubs in
25 that area on Dyckman?

E4TUMCC6

McCaffrey - cross

1 A. It is Dyckman area, there is everything there.

2 Q. And you first saw the complaining witnesses, Ms. Peguero
3 between 4 and 430 when you saw her?

4 Q. And according to you, she was getting into the car when you
5 saw her.

6 A. Yes.

7 Q. In point of fact, Mr. McCaffrey, when you first saw her,
8 she was sitting in her car, isn't that right?

9 A. No.

10 Q. Do you remember testifying in the grand jury?

11 A. Yes.

12 Q. You told the truth in the grand jury, right?

13 A. Yes.

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E4t0mcc7

McCaffery - Cross

1 MR. LARKIN: Reading from page 62. Page 62, line 7.
2 This is the statement that you made:

3 "Q. Can you just make sure to keep your voice up, so I can
4 hear your answer.

5 "A. The answer is we were driving up Dyckman, going towards
6 Broadway. And we seen two girls in a car. One was sitting in
7 the back, one was in the front. Were you asked that, did you
8 make that statement.

9 MR. GARBER: Objection.

10 THE COURT: What is the objection?

11 MR. GARBER: The objection is I think what he is
12 trying to do --

13 THE COURT: I don't care what he is trying to do.

14 MR. GARBER: He's not impeaching his testimony here,
15 he's --

16 THE COURT: Overruled, overruled.

17 Finish the question.

18 Q. We were driving up Dyckman, going toward Broadway, and we
19 seen two girls in the car. One was sitting in the back, one
20 was in the front. Did you make that statement in front of the
21 grand jury after you were arrested and charged with rape?

22 A. I can't recall.

23 Q. If I show you the minutes of your testimony, would that
24 refresh your memory?

25 A. I mean I believe you, Mr. Larkin. What I'm saying is the

E4t0mcc7

McCaffery - Cross

1 details of the grand jury, it was five days after I was
2 arrested. It's a little foggy exactly what I said. But I told
3 the truth, and she told the truth, about what happened in that
4 vehicle.

5 MR. LARKIN: Move to strike as nonresponsive.

6 THE COURT: Overruled. Overruled.

7 Everybody sit down, okay. So, reading the transcript
8 wouldn't refresh your recollection.

9 THE WITNESS: No, your Honor.

10 THE COURT: That's what you are saying, right?

11 Next question.

12 MR. GARBER: Could we have a brief sidebar on that.

13 THE COURT: No.

14 MR. GARBER: Okay. Then, I just would -- this was
15 covered at the trial, this same impeachment happened at the
16 trial --

17 THE COURT: Look, now you're giving a speech. And I
18 just said no --

19 MR. GARBER: -- it's redundant --

20 THE COURT: I said no. So sit down, okay.

21 I'm not used to folks quibbling with me, particularly
22 in front of the jury, so I don't want it to happen again.

23 Next question.

24 Q. Mr. McCaffrey, she was not outside of the car when you
25 first saw her, was she?

E4t0mcc7

McCaffery - Cross

1 A. Getting inside of the car.

2 Q. She was sitting inside the car?

3 A. She was getting inside the car.

4 Q. And your car pulls up alongside her, right?

5 A. Yes.

6 Q. And was your window up or down?

7 A. I can't recall at the moment. I might have put it down at
8 that moment.

9 Q. The windows were closed, right, because the air
10 conditioning was on; isn't that true?

11 A. The AC might have been on. I might have put down the
12 window, yes.

13 Q. And where, in the car, were you sitting, Mr. McCaffrey?

14 A. As I recall, the passenger's seat.

15 Q. You were sitting in the front passenger's seat; right?

16 A. Yes.

17 Q. And you remember your deposition in this case, don't you?

18 A. Yes.

19 Q. April 12th, 2012, at our offices?

20 A. Yes.

21 Q. Right. And you told the truth at your deposition, didn't
22 you?

23 A. Yes, the best of my knowledge.

24 Q. And, page 43 line 5:

25 "Q. Where were you sitting in the car?

E4t0mcc7

McCaffery - Cross

1 "A. Back seat -- I can't recall at the moment."

2 Were you asked that question and did you give that
3 answer at the deposition?

4 A. I said I can't recall at the moment, yes.

5 Q. Your answer was you can't recall at the moment; yes?

6 A. I just said I couldn't recall, I -- at that moment, I
7 just -- I was drinking a lot in the street. I was hung over
8 probably. I mean I answered it the best I could.

9 Q. You were hung over at your deposition, Mr. McCaffrey?

10 A. Yes. I'm an alcoholic. I drink a lot when I am home.

11 Q. Well --

12 A. I tried not to be, but.

13 Q. At your deposition, Mr. McCaffrey, you were able to give
14 truthful testimony, weren't you?

15 A. The best of my knowledge, yes.

16 Q. There was no reason why you wouldn't give truthful
17 testimony at your deposition, would you?

18 A. I was not lying. There is no reason.

19 THE COURT: Let him finish.

20 Q. There is no reason --

21 THE COURT: Finish, go ahead?

22 A. I told the truth. I said exactly what happened.

23 Q. And you recall, at your deposition, that I asked you if you
24 didn't understand any of my questions, or if any of it was not
25 clear, that you should ask me for clarification, right?

E4t0mcc7

McCaffery - Cross

1 A. I understood the question. I'm pretty sure I wouldn't have
2 had a problem. My answer is what was clouded. I was not in
3 the right state of mind at the moment.

4 Q. So at your deposition, you couldn't remember whether you
5 were sitting in the front seat or the back seat when you first
6 saw Ms. Peguero. Do I understand you right?

7 A. I knew I -- I answered it. Like I said, I answered it I
8 didn't recall. I did say that to you in that deposition.

9 Q. So you started a -- you are in the front passenger's seat,
10 right?

11 A. I just stated that, yes.

12 Q. And the car pulls up next to the car that Ms. Peguero is
13 in, right?

14 A. Yes.

15 Q. And you start talking to her, right; start a conversation
16 with her?

17 A. Yes.

18 Q. And it's just normal conversation, hey, hi, how are you
19 doing, what's going on; that kind of thing, right?

20 A. Something of that kind, yes.

21 Q. And what else did you say to her?

22 A. What do you mean, at that moment? Or when I got out the
23 car, or?

24 Q. What else did you say to her?

25 THE COURT: Well, when?

E4t0mcc7

McCaffery - Cross

1 Q. Right at that point. When you pulled up and she was inside
2 the car?

3 A. General conversation, hey, what you all guys did tonight,
4 to that, ask like what you doing.

5 Q. Okay. So you -- what -- well, after you start the
6 conversation with those pleasantries, what did she say to you?

7 A. She starting talking back. She went out, or whatever, I
8 guess, I can't recall exactly what was said.

9 Q. All right. What was she wearing?

10 A. Jeans and a halter top.

11 Q. You remember your deposition, right, Mr. McCaffrey?

12 A. Yes.

13 Q. Page 43, line 20:

14 "Q. Do you remember what she was wearing?

15 "A. I can't recall at the moment."

16 Were you asked that question and did you give that
17 answer?

18 MR. GARBER: Objection.

19 THE COURT: Overruled. Do you recall that answer and
20 that question?

21 THE WITNESS: Not specifically, but if I said it --

22 THE COURT: Well, just if you don't recall, just say
23 you don't recall.

24 THE WITNESS: I don't recall.

25 THE COURT: He doesn't know.

E4t0mcc7

McCaffery - Cross

1 Q. What refreshed your memory about what Ms. Peguero was
2 wearing since the time of your deposition?

3 A. Maybe I'm not drinking the way I was, and I don't drink the
4 same way, and I have been incarcerated --

5 Q. When you first saw Ms. Peguero, did it seem as though she
6 had been drinking?

7 A. Not offhand. Possibly.

8 Q. Well, you testified in the grand jury, right, Mr.
9 McCaffrey. You do recall your testimony in the grand jury,
10 don't you?

11 A. Yes.

12 THE COURT: He clearly recalls testifying in the grand
13 jury.

14 MR. LARKIN: Okay.

15 BY MR. LARKIN:

16 Q. Page 72, lines 18 to 19:

17 "Q. She seemed drunk to you, right?

18 "A. She seemed like she was drinking."

19 Were you asked that question, and did you give that
20 answer?

21 A. Yes.

22 Q. And that was truthful; right?

23 A. Yes.

24 Q. And it seemed to you like she had been drinking when you
25 first saw her, isn't that true?

E4t0mcc7

McCaffery - Cross

1 A. I testified five days after the incident, yes.

2 Q. And when you were interviewed by the detectives in the
3 case, you told them that she -- she was drunk; isn't that
4 right?

5 A. I can't recall at the moment.

6 Q. You asked her to come -- well, you saw -- you saw she was
7 drunk, right, or appeared to be drunk to you, correct?

8 A. I just said no.

9 Q. No? It didn't appear to you as if she had been drinking?

10 A. Drunk. Or drinking. You just said drunk. I didn't know.

11 Q. It appeared to you she had been drinking, correct?

12 A. Possibly, yes.

13 Q. And you asked her to come with you and your friends to an
14 after-hours bar right?

15 A. Yes.

16 Q. And according to you, she said yes, correct.

17 A. Yes.

18 Q. And that's when you got out of your car, the Mercedes, and
19 you got into her car; correct?

20 A. Around the same time.

21 Q. And you opened the door to your car, right. You stepped
22 out, and you opened the door to their car, correct?

23 A. Yes.

24 Q. And you got in; right?

25 A. Yes.

E4t0mcc7

McCaffery - Cross

1 Q. Did you get in the back seat or front seat?

2 A. The front seat.

3 Q. The drivers's seat?

4 A. Yes -- no -- the passenger's side, front.

5 Q. The front passenger's side?

6 A. Yes.

7 Q. Okay. And one of her friends was sitting, was sitting in
8 the car also, right?

9 A. Yes.

10 Q. And you didn't know, you didn't know Ms. Peguero at the
11 time, and you didn't both -- well, you didn't know Ms. Peguero
12 at the time, correct?

13 A. No.

14 Q. And you didn't know her friend in the back seat, either,
15 right?

16 A. No.

17 Q. And as far as you are aware, Ms. Peguero didn't know any of
18 the other three men that you were with, right?

19 A. No.

20 Q. And, no, she didn't know them?

21 A. Yeah, no, she didn't know them.

22 Q. And none of your friends knew her or knew her friend,
23 either; right?

24 A. No.

25 Q. And according to you, you got in the car and the girl in

E4t0mcc7

McCaffery - Cross

1 the back seat didn't say anything, right?

2 A. That's what I said, yes.

3 Q. She never said get out of my car or get the F out of my
4 car?

5 A. No.

6 Q. So she sat there and she said nothing, right --

7 A. Yes.

8 Q. -- to the best of your recollection?

9 A. She -- yes.

10 Q. Right. And while you were sitting in the car, at any
11 point, did you use the expression "mommy?"

12 A. I possibly did, yes.

13 Q. And what does that expression mean?

14 A. I figured it's a term of inearment. Mommy. Like.

15 Q. It's a term of inearment that is used in the Spanish
16 language, right?

17 A. In urban, not just Spanish.

18 Q. And men use it for -- to refer to women, typically?

19 A. Yeah, they having songs about it.

20 Q. Okay. You recall testifying thing at your deposition,
21 right?

22 A. Yes.

23 Q. Mr. McCaffrey, this is page 46 line 7:

24 "Q. Did you ever use the expression mommy when you got in the
25 car?

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McCaffery - Cross

1 "A. I can't recall at the moment."

2 MR. LARKIN: Line 10:

3 "Q. Did's you ever hear that expression referring to a girl as
4 mommy?

5 "A. Yeah, I have heard it before.

6 "Q. What context have you heard it?

7 "A. I don't understand the question.

8 "Q. Have you ever used that expression before?

9 "A. Not that I can recall."

10 Were you asked those questions and did you give those
11 answers?

12 A. Yes.

13 Q. Did you tell the truth when you testified at the
14 deposition?

15 A. Yes.

16 Q. You have heard the expression mommy before though, right?

17 A. I just explained to you I did, yes.

18 Q. But you didn't admit that at your deposition, did you?

19 MR. COHEN: Objection.

20 THE WITNESS: I said I couldn't recall at the moment.

21 MR. COHEN: Objection. I think that's incorrect.

22 THE COURT: One lawyer for the witness. Mr. Garber
23 has to carry the ball for your team. He can answer. Don't
24 worry about him, Mr. Cohen.

25 Overruled.

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McCaffery - Cross

1 THE COURT: Overruled, next question.

2 Q. So you get in the car, and Ms. Peguero -- when you get in
3 the car, was Ms. Peguero in the front seat or back seat?

4 A. She was in the front seat.

5 Q. Was she in the drivers side?

6 A. Yes.

7 Q. And you get in the car and she starts driving, right?

8 A. Yes.

9 Q. And you saw that she is swerving a little bit --

10 A. Yes.

11 Q. -- right? So you took over the driving, right?

12 A. After she pulled over, somebody said her lights were off,
13 yes.

14 Q. And at that point, her friend got out of the car?

15 A. Yes.

16 Q. And from the time you got out of the car and her friend got
17 out of the car, you didn't hear her friend say anything; am I
18 correct?

19 A. Not that I know. Not that I can recall. She said I'm out
20 of there, I'm not going.

21 Q. She didn't say anything else, right?

22 A. No.

23 Q. Okay. And you took over the driving. And your intent was
24 to go back to the parking garage?

25 A. That's what I did, yes.

E4t0mcc7

McCaffery - Cross

1 Q. Right? You wanted to get into the minivan and go to the
2 after-hours party, right?

3 A. Yes.

4 Q. And you continued to the parking garage, right?

5 A. Yes.

6 Q. And that's the same garage where you had parked the minivan
7 earlier that night?

8 A. Yes. And where the Mercedes was parked monthly.

9 Q. And before you went to X Bar, right. So -- I'm sorry, so
10 you -- I'm sorry, Mr. McCaffrey. So you went back to the
11 garage. And the goal, the idea was you were to pick up the
12 minivan and go to this after-hours bar, right?

13 A. Yes.

14 Q. And when you got to the garage, the attendants parked
15 Ms. Peguero's car, right?

16 A. They parked the Mercedes first. It was in front of us,
17 yes.

18 Q. They parked the Mercedes, then they parked her car?

19 A. Yeah.

20 Q. And you all got in the minivan, right?

21 A. Yes.

22 Q. And this garage, where you parked the cars, it was Ramone's
23 regular garage, wasn't it?

24 A. Yes.

25 Q. And who drove the minivan when you left the garage?

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McCaffery - Cross

1 A. I'm not sure, offhand. It could have been either Jay or
2 Kupa.

3 Q. And when you were in the minivan, according to you, what
4 was the seating arrangement?

5 A. It is a three seat, so.

6 Q. Where were you sitting?

7 A. All of the way in the back, in the third row.

8 THE COURT: When you say three seats, you mean three
9 rows of seats?

10 THE WITNESS: Yeah.

11 Q. And you were in the third seat, right?

12 A. Yes.

13 Q. And Ms. Peguero was in the middle seat, right?

14 A. Yes.

15 Q. With another gentleman?

16 A. Yes.

17 Q. Somebody else. And Ramone was in the front, right?

18 A. Yes.

19 Q. Was Carlos in the middle seat.

20 A. I'm not sure, offhand. Either him or Jay.

21 Q. Was Adorno driving?

22 A. I just stated it was either one or the other.

23 THE COURT: Was who driving?

24 Q. Was Jay Adorno driving? Mr. Adorno, was he driving?

25 A. It was either one or the other, I'm not sure which one.

E4t0mcc7

McCaffery - Cross

1 Q. And you drove over toward 207 Street or 204 Street to see
2 if the after-hours party was still going on; is that right?

3 A. Yes.

4 Q. And that was close to the garage, right?

5 A. Not too far.

6 Q. Not far, right; five minute drive?

7 A. Less than that.

8 Q. And you had told Ms. Peguero, when you first saw her inside
9 the car, that the after-hours club that you were going to was
10 on either 204th or 207th street; didn't you?

11 A. I didn't think I specified, just said we're going to
12 after-hours.

13 Q. Do you remember giving a deposition in another case against
14 State of New York in the Court of Claims?

15 A. Yes.

16 Q. You gave that deposition, August 4th, 2011?

17 A. Yes.

18 Q. And you told the truth at that deposition, didn't you?

19 A. Yes.

20 Q. Page 82, line 22:

21 "Q. Did you tell her where you were going?

22 "A. Yes, the after-hours.

23 "Q. But where, in terms of physical address?

24 "A. The street address, I said it was on 207th Street.

25 "Q. You did tell her?

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McCaffery - Cross

1 "A. Yeah. On 204th. Or 204th, right next to each other. So
2 you know, there is no 205th, 206th. It goes 204th, 207th."

3 Were you asked those questions and did you give those
4 answers?

5 A. Yes, if it is there, I said it.

6 THE COURT: Again, only if you remember.

7 THE WITNESS: I don't -- it was awhile ago. Yes.

8 Q. And you told the truth at that deposition, obviously,
9 right?

10 A. Yes.

11 Q. Fair to say that you told Ms. Peguero, specifically, that
12 the after-hours party you wanted to go to was somewhere in
13 Manhattan on 204 or 207 Street?

14 A. At this moment, I can't recall exactly what was said. It
15 was so long ago. But if I said it there, that's what was said.

16 Q. And when you drove there, when you drove by the address of
17 the after-hours club, you saw that it was closed; right?

18 A. Did I see if it was closed? I --

19 Q. You saw that?

20 A. I assume it was closed, I was on the phone in the back,
21 yes.

22 Q. You were on the phone in the back on your Nextel, right?

23 A. Yes.

24 Q. And you drove past the location where the after-hours was;
25 right?

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McCaffery - Cross

1 A. Yes.

2 Q. And you saw that the after-hours was closed; correct?

3 A. Yes.

4 Q. And at that point, the group proceeded to drop off Raymond
5 Uribe and Mr. Adorno in the Bronx, right?

6 A. Yes.

7 Q. Okay. And Mr. Uribe lived on Pelham Parkway, right?

8 A. Yes.

9 Q. Somewhere between East Chester and Williams Bridge in the
10 Bronx, right?

11 A. Yes.

12 Q. And it took about, what, 20 minutes to get there,
13 approximately?

14 A. Probably 15 minutes.

15 Q. Fifteen minutes, 20 minutes. And Mr. Uribe and Mr. Adorno
16 were dropped off in the same area around the same time, right?

17 A. Yes.

18 Q. And Mr. Vargas is driving at that point?

19 A. After they dropped him off.

20 Q. After they dropped him off. After Mr. Uribe and Mr. Adorno
21 got out of the car, Carlos Vargas was driving, right?

22 A. Yes.

23 Q. It was his minivan, right?

24 A. Yes.

25 Q. And you and Miss Peguero were in the back seat, the second

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McCaffery - Cross

1 seat, right?

2 A. I sat in the front.

3 Q. You sat in the front with Mr. Vargas?

4 A. Yes.

5 Q. And Ms. Peguero sat in the back seat?

6 A. Yes.

7 Q. And after you -- okay. And then at that point in time, you
8 turned around and you wanted -- your intention was to come back
9 to the parking garage, right?

10 A. Yes.

11 Q. And when you went across the bridge it was Ms. Peguero
12 said, in words or in substance, she didn't want to go; isn't
13 that right?

14 A. When she went across the bridge, when? When? On Pelham
15 Parkway?

16 Q. After you went across the bridge and you got to the
17 Bronx --

18 A. After --

19 Q. At some point, according to you, Ms. Peguero said she
20 didn't want to go?

21 A. After we dropped off Raymond and Jay?

22 THE COURT: At any point, did she say I don't want to
23 go.

24 THE WITNESS: I can't -- not that I heard.

25 Q. Well, after you dropped off Ramone Uribe Mr. Adorno that is

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McCaffery - Cross

1 when Miss Peguero, who is still in the car, starts getting
2 phone calls, right?

3 A. Yes.

4 Q. According to you.

5 And according to you, she didn't get any calls during
6 the 25 minutes that she was in the car with you up to that
7 point, right?

8 A. I couldn't say specifically. She might have made a call,
9 or got a call. I was on the phone.

10 Q. To your knowledge, she didn't get any calls, right?

11 A. I just answered that.

12 THE COURT: Well, do you recall any calls that she
13 got?

14 THE WITNESS: I mean she could have made one, or she
15 could have received one, I --

16 THE COURT: I'm not asking if she could. Do you have
17 a distinct recollection?

18 THE WITNESS: Not offhand right now. She possibly
19 made a call.

20 THE COURT: Okay.

21 Q. Do you remember your deposition in Court of Claims case --

22 A. Yes.

23 Q. -- right? Page 92, line 20:

24 "Q. So when did the phone calls start?

25 "A. Right after we dropped off Ramone.

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McCaffery - Cross

1 "Q. So to the best of your recollection, she didn't receive
2 any phone calls during the 25 minutes that you were driving to
3 drop him off?

4 "A. Like I said, I was on and off my phone. I can't recall at
5 this time."

6 So you were asked those questions and gave those
7 answers, right?

8 A. Yes.

9 Q. You couldn't recall.

10 A. I just answered the same thing.

11 THE COURT: Doesn't seem like a lot of impeachment.

12 MR. LARKIN: I'm sorry, your Honor.

13 THE COURT: But we're not supposed to be getting this
14 in, if it is not impeachment.

15 So let's move on.

16 MR. GARBER: No objection.

17 MR. LARKIN: Apology for that.

18 Q. Now, the first time she said she had to go back to her car,
19 according to you, was after you are dropped off Mr. Uribe and
20 Mr. Adorno; correct?

21 A. Yes.

22 Q. Before that, she didn't say any -- according to you, she
23 didn't have any complaints, didn't have any concerns, didn't
24 say take me back, or anything like that, right?

25 A. She might have mentioned something to who she was sitting

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McCaffery - Cross

1 next to that she had to go back. But it wasn't -- not that
2 I -- I can't really recall right now. But after, when she made
3 the phone call, she said she had to go back. She might have
4 said it right before, right when we were dropping off Polo.

5 Q. Do you remember your testimony at the criminal trial,
6 right?

7 A. Yes. We just read it.

8 Q. Page 586, line 15:

9 "Q. You heard him, Mr. Uribe say that she actually asked to be
10 taken back before he was dropped off, right?

11 "A. Yeah, a couple of minutes right before we pulled up in
12 front of his house."

13 Were you asked that question and give that answer?

14 A. Yes, I just said the same thing.

15 Q. Oh, it was actually before they were dropped off that she
16 said, she voiced some concern, some wish to get back to the
17 parking garage; isn't that right?

18 A. Yes. Probably immediately right before we dropped them
19 off.

20 Q. And at that point, according to you, she is not crying,
21 right?

22 A. No. Not at all.

23 Q. She is not hysterical, right?

24 A. Not at all.

25 Q. Right? Right?

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McCaffery - Cross

1 THE COURT: He said right.

2 MR. LARKIN: I'm sorry.

3 Q. And as you said during this time you are on your Nextel
4 phone, right?

5 A. Yes.

6 Q. You saw Ms. Peguero, saw her on the street, or you saw her
7 in her car. You got out of your car and you got in their car
8 and invited her to an after-hours party, correct?

9 A. I answered that, yes.

10 Q. And you drove to the garage, where you knew you had a
11 minivan, right? Right?

12 A. Yes, I answered that.

13 Q. And you got into the minivan. And you get into the third
14 seat, right?

15 A. Yes. I said that, yes.

16 Q. And does the third seat face forward or back?

17 A. Forward.

18 Q. Faces forward. And Ms. Peguero is, she's in the second
19 seat with Mr. Vargas, right?

20 A. I -- it was either him or Peter, I don't --

21 Q. You don't say anything to Ms. Peguero, right?

22 A. I can't recall, offhand. I jumped on the phone, started --
23 they started talking amongst themselves.

24 Q. You picked her up, you got her back to the parking lot, and
25 according to you, you got in the minivan, and then you didn't

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McCaffery - Cross

1 say a word to her after that. Is that your testimony?

2 MR. GARBER: Objection.

3 THE COURT: Overruled.

4 Is that accurate?

5 THE WITNESS: I mean -- I guess I didn't say anything
6 to her. I mean I can't recall. I didn't have a conversation.
7 If I said one word to her, I don't think. I might have.

8 THE COURT: Okay.

9 All right, next question.

10 MR. LARKIN: Okay.

11 Q. Now, according to you, she started getting phone calls,
12 either just before or after -- well, withdrawn. She starts
13 getting phone calls after Mr. Uribe dropped her off, right?

14 A. Yes.

15 Q. And she starts crying after she's getting those phone
16 calls, right?

17 A. It proceeded. She didn't start crying, she started arguing
18 with them, first. And slowly --

19 Q. And then she started --

20 A. She slowly --

21 THE COURT: Let him finish.

22 A. -- but shortly upon, after a couple of calls, yes.

23 Q. And, to you, it seemed like she was getting more and more
24 upset as a result of the phone calls, right?

25 A. Yes.

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McCaffery - Cross

1 Q. And while she is getting these phone calls, in between the
2 calls, she is speaking to Mr. Vargas in Spanish, right?

3 A. Yes.

4 Q. And she is -- she is speaking on the phone in Spanish to
5 her friends, right?

6 A. Yes, arguing.

7 Q. And you couldn't understand what she was saying, correct?

8 A. No.

9 Q. While she is getting these calls, at one point Mr. Vargas
10 gets on the phone to talk to her friends, right?

11 A. Yes.

12 Q. He got on the phone once, to your regulation; correct?

13 A. Might have been once, but that's all that I could recall.

14 Q. You recall one time?

15 A. Yes.

16 Q. Right. And you heard Carlos, you told Carlos to tell the
17 friends on the phone to tell them the address where you were
18 going, right.

19 A. Yeah, she was going crazy in the back, so I --

20 Q. And, according to you, that was the address of the garage,
21 right?

22 A. Yes.

23 Q. And Carlos, you told us, owned a mini van; right?

24 A. It was his mini van, I don't know who owns it.

25 Q. Right. But it was a mini van he picked you up with and

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McCaffery - Cross

1 parked at the same garage, right?

2 A. Yes.

3 Q. So Carlos knew the address of the garage, didn't he?

4 A. I don't know, I assume so.

5 Q. Well, it's where he parked his mini van, right?

6 A. Yes.

7 Q. And that's where he picked up the Mercedes, right?

8 A. Yes.

9 Q. He didn't need you to tell him the address of the garage,
10 did he?

11 A. No.

12 Q. And he didn't need you to tell him -- withdrawn.

13 You also told him to say on the phone to Ms. Peguero's
14 friends about how much longer it would take to get there,
15 according to you, right?

16 A. I said we'll be there in like five minutes, five to what
17 shorter period of time, just tell them the address, tell them
18 the address, whoever you are speaking to.

19 Q. And Carlos knew how long it was going to take, right; he
20 didn't need you to tell him?

21 MR. GARBBER: Objection.

22 THE COURT: Sustained.

23 Q. Isn't it true that Carlos gave a wrong address to
24 Ms. Peguero's friends?

25 A. I don't -- not to my knowledge, no.

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McCaffery - Cross

1 Q. Best of your knowledge, Carlos only gave one address to
2 Ms. Peguero's friends?

3 MR. GARBER: Objection.

4 THE COURT: I'm not sure I understand the only one
5 address. Is there more than --

6 Q. To your knowledge, Carlos Vargas has had one conversation
7 with Ms. Peguero's friends on the phone, correct?

8 A. Yes. To my knowledge, he told them where the parking lot
9 was.

10 Q. And in that conversation, he told them where the parking
11 garage was, right, to your knowledge?

12 A. To my knowledge, yes.

13 Q. And he didn't -- he didn't give -- you didn't see him give
14 any other addresses, is what you are saying, over the phone, to
15 Ms. Peguero's friends, right?

16 A. To my knowledge, he gave them the address.

17 Q. All right. And as Ms. Peguero is getting these phone
18 calls, and she's talking to Mr. Vargas, according to you, she
19 is freaking out, right?

20 A. Yes.

21 Q. She's screaming, yelling, punching the back of the seat;
22 right?

23 A. Yes.

24 Q. She's arguing with whoever she is on the phone with, right?

25 A. Yes. With numerous phone calls.

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McCaffery - Cross

1 Q. She's crying?

2 A. Yes.

3 Q. Punching the car; right?

4 A. I just said yes.

5 Q. And so according to what you observed, it was -- it was the
6 phone calls that were making her upset, right, Mr. McCaffrey?

7 A. Yes.

8 Q. And from the time you dropped off Mr. Uribe, it took about
9 15 minutes to get back to the garage; correct?

10 A. Yes.

11 Q. And by the time you got back there, she was, what, she
12 appeared angry to you, according to you, right?

13 A. Yes.

14 Q. Were her clothes askew, at all, or messed up?

15 A. No.

16 Q. Was her belt broken?

17 A. No.

18 Q. Were her pants open?

19 A. No.

20 Q. You don't have any explanation for how it is her friends
21 found her in the garage with her belt broken, do you?

22 A. Her friends beat her up.

23 MR. GARBER: Objection.

24 THE WITNESS: I answered that. He said what's my
25 assumption. Her friends beat her up.

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McCaffery - Cross

1 THE COURT: No, I don't think -- I don't think he said
2 what was your assumption. But he asked the question, you
3 answered the question. And I'm not sustaining the objection.

4 So, go ahead.

5 Q. And you don't have any explanation for how it is her pants
6 were open when her friends found her in the parking lot; do
7 you?

8 A. Objection.

9 MR. GARBER: Objection.

10 THE COURT: You have no explanation, right?

11 THE WITNESS: I thought she explained it when she said
12 what happened with her friends, that her friends beat her up
13 when she testified, no?

14 THE COURT: Okay. So that's -- this is the
15 explanation.

16 Q. You were not in the garage when her friends came back,
17 right.

18 A. No.

19 Q. And after this night, you got a call at some point to go
20 down to the precinct, correct?

21 A. Yes.

22 Q. Right. And you -- who called you was, it a detective or
23 was it Mr. Uribe?

24 A. I think Mr. Uribe called me in the beginning. And then I
25 spoke to the detective afterwards.

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McCaffery - Cross

1 Q. And you went down to the precinct and spoke to a detective;
2 right?

3 A. Yes.

4 Q. And you made a statement, right?

5 A. I didn't make a statement, I told them what happened.

6 Q. You were asked questions about what happened, correct?

7 A. Yes, but I didn't write anything, I just told them
8 verbally.

9 Q. You didn't write a statement, but you did have a
10 conversation, and you gave the detective, you told the
11 detective what you said you knew about the incident involving
12 Ms. Peguero, correct?

13 A. Yes.

14 Q. And the detective read you your Miranda rights before you
15 gave the statement.

16 A. I can't recall right now, but possibly, I mean --

17 Q. And the statement you gave was truthful; right?

18 A. What do you mean, what I said?

19 Q. What you said to the detective was truthful, right?

20 A. Yes.

21 Q. To your knowledge -- and you were put in a line-up after
22 that; true?

23 A. Yes.

24 Q. And after that, Mr. McCaffrey, you went to trial and you
25 were convicted of the charge; right?

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McCaffery - Cross

1 A. Yes. Falsely accused, yes.

2 Q. Okay.

3 MR. LARKIN: One moment.

4 Q. Now, your attorneys called witnesses to testify in your
5 behalf at the trial; right?

6 A. Yes.

7 Q. Mr. Uribe testified; right?

8 A. Yes.

9 Q. What about Mr. Adorno, did he testify?

10 A. No.

11 MR. GARBER: Objection.

12 A. I don't think so.

13 THE COURT: Just to the fact of the testimony?
14 Overruled.

15 Q. Mr. Adorno didn't testify, did he?

16 A. No.

17 Q. What about Mr. Vargas, did he testify?

18 A. No.

19 Q. Isn't it true Mr. Adorno was later arrested and charged
20 with rape in this case --

21 MR. GARBER: Objection. Objection and stricken.

22 THE COURT: Sustained. Sustained.

23 MR. GARBER: I'm asking that it be stricken.

24 THE COURT: Yeah, I'm going to strike that answer.

25 BY MR. LARKIN:

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McCaffery - Cross

1 Q. Well, give me one moment.

2 Now, you talked about being in, being in state prison
3 on your direct examination; right, Mr. McCaffrey?

4 A. Yes.

5 Q. You were strip searched frequently, right?

6 A. Numerous times.

7 Q. And you were housed in a cell or were you in a dorm area?

8 A. During what occasion?

9 Q. On any of the -- on any of the -- well, you were
10 at Downstate and Sing Sing and Five Points; right?

11 A. During this wrongful conviction, right.

12 Q. Right. I'm talking about being in state custody?

13 A. Okay, in state custody. Because the county custody process
14 is different. Yes.

15 Q. You were in Down State; right?

16 A. Yes.

17 Q. And went to Sing Sing?

18 A. Yes.

19 Q. And then Five Points?

20 A. Yes.

21 Q. And then Greenhaven; right?

22 A. Yes.

23 Q. And in each of those facilities, you were -- was the strip
24 search, was it every day, or was it --

25 A. Every time I got a visit, coming back and forth, whenever

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McCaffery - Cross

1 there was general searches, individual, whatever, the officers
2 just wanted to strip search you.

3 Q. You were in a cell, or you were in a dorm area?

4 A. In cells.

5 Q. During all of those prisons?

6 A. There are no dorm areas in the prisons.

7 Q. Okay. You currently at Orleans, right?

8 A. Yes, sir.

9 Q. In a dorm area?

10 A. Yes, in a dorm area.

11 Q. Dorm area now?

12 A. Yes.

13 Q. Are you strip searched periodically?

14 A. No.

15 Q. Never strip searched?

16 A. Only on visits. It's not the same situation.

17 Q. Strip searched --

18 THE COURT: Let him answer.

19 A. Coming back from visits. Yes, I'm strip searched.

20 THE COURT: Can I just -- can the jury see the
21 witness?

22 Q. And you have meals at set times; right?

23 A. Yes. It is optional and mediums; yes.

24 Q. And when you were in Sing Sing and Five Points and other
25 maximum security facilities, you had meals at set times; right?

E4t0mcc7

McCaffery - Cross

1 A. Yeah, mandatory.

2 Q. Meals are optional in medium security prisons?

3 A. Yes.

4 Q. And in any event, you're obviously, to a degree, you're
5 denied your liberty, currently, when you are in the medium
6 security prison?

7 A. There is no comparison.

8 THE COURT: Well, just answer the question. To a
9 degree --

10 THE WITNESS: Yes.

11 THE COURT: Okay. Next question.

12 Q. And your release date is July 2016; right?

13 A. Yes.

14 Q. Okay.

15 MR. LARKIN: I don't have any further questions at
16 this time.

17 THE COURT: Okay, any redirect?

18 MR. GARBER: Yes.

19 REDIRECT EXAMINATION

20 BY MR. GARBER:

21 Q. You were just asked by Mr. Larkin about whether your
22 liberty has been obstructed during your current incarceration
23 to an extent. And you had said there is no comparison.

24 What did you mean by that?

25 A. How, in maximum security prison, you're in a 6 by 9 cell

E4t0mcc7

McCaffrey - redirect

1 until controlled movement. Meaning the whole, there is 60
2 inmates on each company. They are moved all at once. Moved
3 once to chow, all together. Moved to the yard. You know, you
4 are locked back in your cell after set times. Everything is
5 calculated out to where medium is, they announce food is being
6 served, you sign out on a booklet and walk to mess hall in
7 another building and to where everything is in-house.

8 In a maximum security prison you're locked in a cell.
9 And in a dorm area, like, you have a cubicle, you have free
10 area to walk around, use the microwave and --

11 Q. Okay.

12 What is controlled movement?

13 A. It like cattle. You walk in two lines, to the mess hall,
14 walk back. To move, they bang on the wall twice with the
15 stick, to stop it is one hit. They lock you. They go back to
16 your company. You are locked back into your cells until the
17 next controlled movement, meaning the option to either, in the
18 evening to go to recreation, to the yard, or to different --
19 it's just. It is only three movements per day, otherwise you
20 are locked in and eating food --

21 Q. Are there any other ways there is a difference between the
22 incarceration with a rape conviction in a maximum security
23 prison, as compared to what you are going through now?

24 A. I didn't really know I couldn't compare it until actually
25 I'm currently in trouble now. I go to the medium now. And it

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McCaffrey - redirect

1 is like there is a lot, six people with those type of cases,
2 and it's -- it's fine for them, because they -- they pled to
3 their charge, they are guilty. You know, they get to walk
4 around, and have general freedoms that, you know, you are
5 restricted to. In maximum security prison, let alone, it is
6 like acceptable in the medium to have a messed up case to in
7 the max you are a rapist. And I'm not out. I got the scarlet
8 R on me. Labeled. To where there is so many in a medium
9 facility, they get to live comfortably. You know, not -- it's
10 just a big difference, you know, go to the yard when they want.
11 They are not ridiculed by the officers. It is a different
12 category of officers working in medium. They are not -- the
13 charges are not pointed out. And I mean if I -- it's just a --
14 it's a big difference.

15 Q. You were asked questions on cross-examination about whether
16 or not Ms. Peguero was outside of the car, or inside; outside
17 or inside the car when you approached. Do you remember those
18 questions?

19 A. I mean I know that she was getting into the drivers seat.

20 THE COURT: But just the only question --

21 THE WITNESS: I'm sorry.

22 THE COURT: -- was do you remember the questions on
23 cross about that.

24 THE WITNESS: Oh, yes.

25 THE COURT: Okay, next question.

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McCaffrey - redirect

1 Q. Can you explain?

2 THE COURT: Explain what?

3 Q. Was she inside or was she outside?

4 A. Like I said, she was getting into the drivers seat.

5 Q. Do you remember being asked about this, also, at the trial.
6 And this is page 555.

7 MR. LARKIN: I object to this.

8 THE COURT: Overruled.

9 Overruled, you can ask the question.

10 Q. And specifically being asked at the trial what you
11 testified to at the grand jury on this. Do you remember that?

12 A. Yes.

13 MR. LARKIN: Objection. Well --

14 THE COURT: Overruled.

15 MR. LARKIN: Okay.

16 BY MR. GARBER:

17 Q. Do you remember being asked this question at the trial.
18 This is page 555, line 19:

19 "Q. You never told the grand jury that anyone was standing
20 outside of the car; did you?

21 "A. She was getting into the passenger's seat."

22 do you remember being asked that question and giving
23 that answer?

24 A. Yes.

25 Q. Okay.

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McCaffrey - redirect

1 MR. GARBER: I have no further questions.

2 THE COURT: Okay, any recross?

3 MR. LARKIN: Very briefly.

4 RECROSS EXAMINATION

5 BY MR. LARKIN:

6 Q. I think, Mr. McCaffrey, I thought I heard you say that the
7 inmates in medium security prisons live comfortably; did you
8 say that?

9 A. More comfortable in comparison to --

10 Q. Comfortably.

11 A. More comfortable. Maybe my vocabulary --

12 Q. It is not comfortable in prison.

13 A. Of course it is not, it is prison.

14 MR. LARKIN: Thank you. I have no further questions.

15 THE COURT: Okay.

16 Mr. McCaffrey, you can step down. Thank you.

17 THE COURT: Let's get Ms. Pujols in here.

18 Raise your right hand.

19 AURORA PUJOLS,

20 called as a witness by the plaintiff,

21 having been duly sworn, testified as follows.

22 THE COURT: State your name and spell your last name.

23 THE WITNESS: Aurora Pujols, A-U-R-O-R-A, P-U-J-O-L-S.

24 THE COURT: Good afternoon. Thank you. Maybe move a
25 little bit closer to that microphone. Great, okay. And you

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McCaffrey - recross

1 can proceed.

2 DIRECT EXAMINATION

3 BY MR. GARBER:

4 Q. Thank you. Are you here pursuant to a subpoena?

5 A. Yes, I am.

6 Q. Do you want to be here?

7 A. No, I don't.

8 MR. LARKIN: Objection, your Honor.

9 THE COURT: Overruled.

10 Q. Do you want to be here?

11 A. No.

12 Q. You know that I represent William McCaffrey, right?

13 A. I do.

14 Q. And there was one other time that you and I met. It was at
15 a deposition in March of 2012; is that right?

16 A. Yes.

17 Q. You and I have never spoken about the substance of your
18 testimony, other than either at a deposition or right now in
19 the courtroom, right?

20 MR. LARKIN: Objection to the --

21 THE COURT: Overruled, you can answer.

22 Q. Have we --

23 THE COURT: You can answer the question.

24 THE WITNESS: No, we haven't.

25 Q. And you have spoken to Mr. Larkin about your testimony

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Pujols - direct

1 before the deposition, right?

2 A. About today's?

3 Q. No. Before your deposition, did you have an opportunity to
4 speak to Mr. Larkin?

5 A. Yes, I did.

6 Q. You spoke to him by phone before your deposition, or did
7 you speak to him by phone before your deposition?

8 A. I don't remember if it was by phone, or by -- or if I went
9 in person.

10 Q. Do you remember your deposition on March 13 of 2012?

11 MR. LARKIN: Objection, your Honor, I --

12 THE COURT: Overruled.

13 You can answer the question. Do you remember your
14 deposition?

15 THE WITNESS: I don't remember the date, but I
16 remember going on a deposition.

17 Q. Do you remember being asked questions at that deposition
18 about whether or not you spoke to Mr. Larkin before that
19 deposition?

20 A. No, I don't remember.

21 MR. GARBER: This is page 39.

22 Q. Do you remember being asked the following questions and
23 giving the following answers: This is line 3.

24 "Q. Before you came here today, you had an opportunity to
25 speak to Mr. Larkin?

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Pujols - direct

1 "A. Yes, I did.

2 "Q. You spoke to him by phone on Sunday?

3 "A. Correct."

4 Do you remember being asked those questions and giving
5 those answers?

6 A. Yes, I do.

7 Q. Does that refresh your recollection as to whether or not
8 you had an opportunity to speak to Mr. Larkin before your
9 deposition?

10 A. Yes, it does.

11 Q. And how long did you speak to him before your deposition?

12 A. I don't remember.

13 Q. Do you remember being asked this question and giving this
14 answer. This is page 40:

15 "Q. How long did you speak for?

16 "A. Maybe like 15 minutes."

17 Do you remember being asked that question and giving
18 that answer?

19 A. I don't remember.

20 MR. GARBER: I would ask for a stipulation that this
21 is accurate testimony.

22 THE COURT: We can deal with that later.

23 Let's go ahead with the examination.

24 MR. GARBER: Okay.

25 Q. Are you denying that you spoke to Mr. Larkin before the

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Pujols - direct

1 deposition?

2 A. I'm not denying it, but this was a really long time ago.

3 Q. We are talking about, by phone, before your deposition.

4 A. I remember speaking to him on the phone.

5 Q. Do you also remember that your deposition started late on
6 Tuesday morning?

7 MR. LARKIN: Objection to that.

8 THE COURT: Well, do you remember that?

9 THE WITNESS: I don't remember.

10 Q. Well, do you remember that before you -- well, did -- where
11 was the deposition?

12 A. In a courtroom.

13 Q. Was it at --

14 A. I know it was here in New York in one of these buildings,
15 but I don't remember which building it was.

16 Q. Was it Corporation Counsel at 100 Church Street?

17 A. That's correct.

18 Q. Mr. Larkin's office?

19 A. Yes.

20 Q. And do you remember that prior to coming to the deposition
21 room, you had met with him for about 25 or 30 minutes?

22 A. I remember sitting in his office, yes.

23 Q. Do you remember talking to him for about 25 or 30 minutes
24 before your deposition?

25 A. I don't remember if we spoke. I know I sat in his office.

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Pujols - direct

1 Q. Do you remember being asked the following question and
2 giving the following answer. And this is page 43, line 10:
3 "Q. How much time did you spend with Mr. Larkin before the
4 deposition started?

5 "A. Maybe 25 minutes; 25, 30 minutes, probably."

6 Do you remember being asked that question and giving
7 that answer?

8 A. I don't remember.

9 Q. Are you denying that you gave those?

10 A. I'm not denying. I'm only telling you what I remember.

11 Q. And you were under oath at that deposition, right?

12 A. I believe so.

13 Q. Where is Ms. Peguero now?

14 A. I believe she is in the Dominican Republic.

15 Q. She was deported, right?

16 A. That is correct.

17 Q. And she was deported after she was convicted of perjury,
18 right?

19 MR. LARKIN: Objection.

20 THE COURT: I'm not sure this is the witness for that,
21 so sustained.

22 BY MR. GARBER:

23 Q. Are you aware, were you aware what happened to her as far
24 as -- did she have a criminal case?

25 MR. LARKIN: Objection.

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Pujols - direct

1 A. I know she was deported, that's all I know.

2 Q. And this was after she served time in jail?

3 A. I believe so.

4 Q. Well, do you talk to her?

5 A. I have not spoken to her in a year.

6 Q. Okay. We're going to go through a timeline here.

7 Now, the incident that started all of this was
8 September, the evening of September 18, 2005?

9 A. That's correct.

10 Q. And prior to -- well, it was an incident where she claimed
11 she as raped, right?

12 A. That is correct.

13 Q. And then you went to the hospital with her, correct.

14 A. That's correct.

15 Q. And then you were interviewed by detectives in this case;
16 right?

17 A. That's correct.

18 Q. And it was Detective Arbuiso?

19 MR. LARKIN: Objection to leading, your Honor. I
20 think the Court did rule on some of this.

21 THE COURT: Yeah, I mean at this point, I think we
22 could try not to lead.

23 MR. GARBER: I'll open it up.

24 THE COURT: Okay.

25 BY MR. GARBER:

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Pujols - direct

1 Q. Was Detective Arbuiso -- well, what was the name of the
2 detective who you spoke to?

3 A. I spoke to two detectives.

4 Q. What were their names?

5 A. Arbuiso, because you just mentioned him. But I don't
6 remember the name of the other detective.

7 Q. Are you saying Mr. Arbuiso because I just mentioned him, or
8 are you saying Arbuiso because I refreshed your memory about
9 what his name was?

10 A. Because you refreshed my memory of what his name was.

11 Q. Was it Arbuiso?

12 A. Yes, it was.

13 Q. Okay. And the other one, you don't know his name?

14 A. I don't recall his name.

15 Q. Was he Spanish? Was he Caucasian?

16 A. He was Hispanic.

17 Q. And look in the courtroom. Do you see these two gentlemen
18 sitting over there?

19 A. Yes, I do.

20 Q. Do they look familiar?

21 A. A little bit.

22 Q. A little bit in regard to who the detectives were?

23 A. A little bit, but it's been a really long time since I have
24 seen them.

25 Q. Okay. Are you saying that it is not Arbuiso, and the

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Pujols - direct

1 Spanish guy?

2 A. I didn't say that.

3 MR. LARKIN: Objection, your Honor.

4 THE COURT: Do you recognize either of the two men at
5 the back table?

6 THE WITNESS: I kind of remember the one to the right.

7 Q. Okay. You could remember the one to the right?

8 A. I do.

9 THE COURT: You do, or cannot.

10 THE WITNESS: I do.

11 Q. So the one at the far end of the table?

12 A. Correct.

13 Q. Is that the Spanish one that you were referring to?

14 A. They both look Spanish.

15 Q. So which one would be the Spanish one, or the one to the
16 right. Was he the Spanish one as you are referring to the
17 Spanish one?

18 THE COURT: Which one is Arbuiso?

19 THE WITNESS: I don't know which one Arbuiso is. I
20 just remember Arbuiso, because he said Arbuiso. I can't tell
21 you which one is which.

22 THE COURT: All right, next question.

23 Q. Now, after you went to the hospital with Ms. Peguero on
24 September 18th of 2005, you had contact with the detectives,
25 or -- did you have contact with the detectives?

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Pujols - direct

1 A. I did.

2 Q. And was that in New York, or in New Jersey?

3 A. In New York.

4 Q. Was there a detective involved in New Jersey at all?

5 A. There was, but for a really brief period.

6 Q. Do you remember the name of that detective?

7 A. No, I only remember that it was a female.

8 Q. And when you had contact with the detectives in New York,
9 how did you get to New York?

10 A. In a car.

11 Q. Were you driven from New Jersey to New York?

12 A. Yes.

13 Q. By who?

14 A. By the female detective from New Jersey.

15 Q. And then where did you connect with the detectives from New
16 York?

17 A. I think they picked us up once we crossed the tunnel and
18 then we drove to the precinct.

19 Q. Did you drive around before you went to the precinct?

20 A. Yes, we did.

21 Q. And who was with you?

22 A. The detectives, Buirny, and I think Heliana was with us,
23 also, but I'm not sure.

24 Q. What about Maria Sosa?

25 A. Probably. But I don't remember, because I -- I think she

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Pujols - direct

1 had to leave because she had to go to work. I know one of us
2 had to go, but I don't remember if it was Maria or Heliana that
3 was with us.

4 THE COURT: Okay let's have another question.

5 MR. GARBER: Just one moment, your Honor.

6 Q. So you said you drove around with the detectives?

7 A. That's correct.

8 Q. And you get interviewed by them in a precinct?

9 A. Yes, I did.

10 Q. And who interviewed you in the precinct?

11 A. The detectives.

12 Q. Which ones?

13 A. The Detective Arbuiso. And I don't remember the other
14 detective's name.

15 Q. Did you ever appear in a line-up?

16 THE COURT: Appear at a line-up.

17 MR. LARKIN: View a line-up, I think is the question.

18 BY MR. GARBER:

19 Q. Well, did you ever appear to view a line-up, did you ever
20 appear for a line-up?

21 A. I went to go see a line-up; yes.

22 Q. Did you ever testify before a grand jury in regard to the
23 criminal case against Mr. McCaffrey?

24 A. Yes, I did.

25 Q. Did you ever testify at a trial in regard to the criminal

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Pujols - direct

1 case against Mr. McCaffrey?

2 A. I didn't hear the question --

3 Q. Did you ever --

4 A. -- sorry.

5 Q. Did you ever testify at a trial, a criminal trial involving
6 Mr. McCaffrey?

7 A. I did.

8 Q. Do you recall being interviewed by a private investigator
9 who worked for Mr. McCaffrey in April of 2009?

10 A. I remember being interviewed by a private investigator.

11 Q. And do you remember being questioned about that interview
12 at your deposition?

13 A. I don't remember being questioned about it, but I remember
14 the interview with the detective. Or with the private
15 investigator.

16 Q. Do you remember meeting with Evan Krutoy, a prosecutor who
17 was reinvestigating the criminal case against William
18 McCaffrey.

19 A. I do.

20 Q. Do you remember testifying at a grand jury that was focused
21 on perjury charges against Buirny Peguero?

22 A. I do.

23 Q. And I believe you said you remember your deposition on
24 March 13 of 2012?

25 A. I do.

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Pujols - direct

1 Q. When you spoke to the investigator in April of 2009, he
2 came out to see you in New Jersey; right?

3 A. That is correct.

4 Q. And you had a conversation with him, right?

5 MR. LARKIN: Objection.

6 THE COURT: The fact of the conversation, I'll allow.

7 MR. LARKIN: It's the leading.

8 MR. GARBER: Could I have a little latitude.

9 THE COURT: I think you have had a lot of latitude. I
10 don't think there is any nonleading yet, so I'm you a little
11 latitude.

12 Q. You had a conversation with the investigator?

13 A. I did.

14 Q. And he came to New Jersey to see you, right?

15 A. That is correct.

16 Q. Did he meet you outside of a salon where you were getting
17 your hair done?

18 A. That's correct.

19 Q. And you spoke with him in a car, right?

20 MR. LARKIN: Objection. I mean counsel -- counsel's
21 testifying.

22 THE COURT: Where did you meet him?

23 THE WITNESS: At a bar.

24 Q. At a bar. Did you meet with him in a car first?

25 A. I think his car was parked in front of the salon, and then

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Pujols - direct

1 we went to a bar.

2 Q. Okay. So you had a conversation with him inside the car,
3 and then you went to a bar and continued the conversation?

4 A. I remember us speaking in the bar.

5 Q. Are you saying you didn't speak in the car.

6 A. I am saying I don't remember.

7 Q. And you later learned that that conversation was
8 tape-recorded, right?

9 THE COURT: Okay, sustained.

10 We're going to break for today, ladies and gentlemen.

11 We'll pick up tomorrow at 9:30. Don't discuss the
12 case. Keep an open mind. Take your books with you and leave
13 them in the jury room. And make sure we get here, ready to go,
14 at 9:30 sharp. Okay, thank you.

15 All rise for the jury.

16 (Jury excused)

17 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Ms. Pujols, you are not finished. Try to
3 get here at 9:15.

4 THE WITNESS: I have to have car service.

5 THE COURT: How did you get here today?

6 THE WITNESS: I drove in yesterday and today.

7 THE COURT: Because you don't have access?

8 THE WITNESS: Right.

9 THE COURT: Counsel, we will address now or think
10 about it. I am not sure where you live or the logistics of it.
11 We want you here about 9:15, so that we can start 9:30 sharp so
12 that we can finish you up tomorrow before lunch. Anything else
13 anybody like me to instruct the witness on?

14 MR. GARBER: That she shouldn't talk about her
15 testimony.

16 THE COURT: She is on direct.

17 See you tomorrow. Thank you very much. And if you
18 bump into the jurors outside, don't talk to them, don't speak
19 to them, don't look at them. And I have given them similar
20 instructions.

21 So you are going to make arrangements to connect with
22 each other.

23 THE WITNESS: He has my home number.

24 (Witness excused)

25 THE COURT: I am trying to figure out where we are

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1 going with this direct. Do you intend to ask her about what
2 the defendants said to her?

3 MR. GARBER: Absolutely.

4 THE COURT: It seems like you are trying to start with
5 the investigator.

6 MR. GARBER: The problem I'm having is that I am
7 actually feeling you out to see how far I can go with direct
8 and where -- I am going to start getting into areas that she is
9 going to be difficult with and I am going to have to start
10 refreshing her recollection and --

11 THE COURT: I don't know if she is going to be
12 difficult or not. I just want to make sure that you are not
13 planning to try to introduce the recording before you have
14 asked her about the events of that evening or the aftermath of
15 the investigation.

16 MR. GARBER: I don't see how I can do that. Just so
17 you know, I asked the question about the recording. I am going
18 with the history. At the deposition, I could not get her to
19 open up and get her to say anything until she made the
20 statement --

21 THE COURT: At that point maybe she didn't know if she
22 was recorded. All that I am trying to figure out, if you are
23 trying to introduce the recording, the investigator before you
24 have elicited any investigation about the detectives told her
25 what she told the detectives.

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1 MR. GARBER: My next question was didn't you tell
2 Mr. Dwyer and say --

3 MR. LARKIN: I would object.

4 THE COURT: That is an out-of-court statement that you
5 are offering it for the truth. It seems to me what you have to
6 do first is ask her what the detective said to her and what she
7 said to the detectives and you can impeach her with the
8 statements to Dwyer and then, depending on what is said.

9 MR. GARBER: You are right. I am just up one step
10 ahead of myself. That is the line I'm going down.

11 MR. LARKIN: Your Honor, I am going to object to
12 leading when we get to that line. The questions ought to be
13 simple and direct. Were you interviewed? What did you say?
14 Were you asked questions? What did you say in response to
15 those questions? And what did they say to you? Did you say
16 anything about a fight?

17 THE COURT: I get all of that. I don't think it is
18 going to take much to allow her to be treated as a hostile
19 witness. She has never agreed to meet with Mr. Garber, only
20 spoken to him in depositions. She is only here because of a
21 subpoena. I don't want to push her too hard. It is not clear
22 to me that she is not going to answer non-leading questions.

23 Anything else that we need to discuss tonight before I
24 rush off to my class?

25 MR. LARKIN: One thing, that we wanted to tee up. We

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1 mention there is some law concerning the effect of a settlement
2 with the state.

3 THE COURT: With respect to damages?

4 MR. LARKIN: With respect to damages only. We did get
5 a stip about -- either Saturday before the trial and there was
6 a settlement made to Mr. McCaffrey. And I think we are going
7 to be briefing the issue of the legal effect of that settlement
8 on what damages he can recover.

9 THE COURT: This goes to the jury?

10 MR. LARKIN: It goes to the Court. It will be on a
11 Rule 50 motion. I expect plaintiff is going to take a very
12 different view of what the effect of this decision.

13 THE COURT: I will be thinking about it.

14 MR. GARBER: It is a judge question, not a jury
15 question we will deal with it. Just quickly, and I know that
16 you have to leave. On Ms. Zgodny's opening she argued that
17 Ms. Peguero only recanted in a very narrow way that
18 Mr. McCaffrey didn't rape her. In my opinion that opens the
19 door for us to show that there was DNA evidence that was found
20 on the bite mark on Ms. Peguero's arm that has the profile of
21 Aurora Pujols on it. I don't think it is fair for the jury to
22 be left with the impression that this is a technical thing that
23 relies on Ms. Peguero's credibility only, because they can
24 attack her credibility and do an injustice to the nature to the
25 sweeping nature of that exoneration.

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1 THE COURT: I don't think that anyone is suggesting
2 that the bite mark is from the defendant. Are you?

3 MR. LARKIN: Absolutely not, just the opposite.

4 MS. ZGODNY: In fact, that Ms. Peguero recanted what
5 happened up in the Bronx in that vehicle. Everything leading
6 up to that point, she has not recanted. I was very careful
7 about reading Ms. Peguero's sentencing minutes and the plea
8 allocution and all of that. I was very precise in what I said.
9 I absolutely did not go out of bounds and saying she has
10 recanted everything, violent acts that happened up in the
11 Bronx.

12 THE COURT: If I have the sense that the jury is left
13 with the misimpression that Mr. McCaffrey actually bit the
14 victim, then I would have to clear that up or allow Mr. Garber
15 to clear that up.

16 Mr. Garber, take a look at the opening and point to me
17 what it is that you think has left the jury or could leave the
18 jury with such a misimpression, because they shouldn't be left
19 with that kind of misimpression. If there will be a
20 stipulation, there will be a stipulation.

21 MR. LARKIN: One of our arguments is going to be that
22 Ms. Peguero herself, by describing the crime the way that she
23 did, she specifically reported that the assailant bit her. The
24 DNA testing we know now strongly, strongly --

25 THE COURT: Mr. Garber's concern is that the jury has

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1 been asked to believe that everything but a rape happened, and
2 everything else was true, including and bites and hits and
3 other things. If that is the impression, then I think that he
4 would get to rebut.

5 MR. LARKIN: I don't think that we intend to
6 communicate that and --

7 MS. ZGODNY: Mr. Garber can get the minutes and he can
8 read my opening. I would show him my opening. That is not
9 what I said. I was very precise in my opening. At a point to
10 say, now this part has not been recanted. It is everything
11 after that --

12 THE COURT: I am not prepared to rule on this now.

13 Ms. Garber, I take your point. I am sensitive to it.
14 Point me to the record where you think also there is a
15 misimpression that you think has been left. And if you think
16 that is the case, we will deal with it later.

17 A couple of other things. Mr. McCaffrey, there was a
18 couple of times during questioning where you started asking
19 questions. Am I on trial here? Why do I have to answer these
20 questions. A couple of times you said, I already answered
21 that. I just want to make it clear. You don't get to do that.
22 I don't think that you take the stand again, and I don't know
23 that you meant any disrespect. You have to be careful about
24 that kind of thing. Witnesses have to answer questions, unless
25 they are improper questions. If they are improper questions

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1 then the lawyers object and I rule.

2 If you ask questions like that, it puts me in a tough
3 spot because I am tempted to explain, you are not on trial the
4 way you are on trial in a criminal case. But the jury is being
5 asked to assess your credibility and the credibility of other
6 witnesses and counsel is free to explore areas of inconsistency
7 and inaccuracy and that is fair game, but I don't want you to
8 leave with the misimpression --

9 PLAINTIFF ATTORNEY: I certainly apologize, your
10 Honor.

11 THE COURT: Apology accepted. I just wanted to
12 explain.

13 Anything else that we need to cover?

14 MR. GARBER: I have not checked my emails in the last
15 two hours -- from Mr. Dwyer -- I am going to continue my
16 efforts to have him here for late morning because that's when
17 he would testify. I am just alerting the Court.

18 THE COURT: Let me know if you need to do something.

19 Tomorrow, the lineup is Ms. Pujols and then --

20 MR. GARBER: Possibly Mr. Dwyer, then possibly
21 Ms. Sosa.

22 MR. LARKIN: Can I say one thing? I had a phone call
23 message from Maria asking what is happening, what is going on.
24 I wanted to wait until the day to see where we are. Did you
25 want to call her before the officers?

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1 MR. GARBER: I would, because they are here. It is
2 going to turn on -- we have decision to make after Ms. Pujols
3 testifies.

4 MR. LARKIN: You talk to her.

5 THE COURT: She will be here. She understands that
6 she needs to be here.

7 MR. LARKIN: I subpoenaed her. Plaintiffs did not
8 subpoena her. Should I tell her to be here.

9 MR. GARBER: We can work it out.

10 THE COURT: Are you going to call her even if she
11 testifies on Mr. Garber's case?

12 MR. LARKIN: No.

13 THE COURT: Ask her to be here tomorrow. I think that
14 we should have her here tomorrow. I think there is a strong
15 possibility she will be on tomorrow.

16 You started saying, Ms. Pujols, Ms. Sosa, Dwyer and --

17 MR. GARBER: Possibly the defendants and then we will
18 be done, other than Strain and Krutoy, but those are question
19 marks, depending on how things go.

20 THE COURT: That should take us through tomorrow. Be
21 here by 9:15. If the jury is here at 9:30, we are going to
22 start on the dime. I just want to signal to them that we are
23 taking deadlines seriously and they should as well.

24 Have a good night. See you tomorrow.

25 (Proceedings adjourned until 9:30 a.m., April 30,
2014)

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